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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket Number LS–02–06]

RIN 0581–AC13

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the hourly fees charged for voluntary Federal meat grading and certification services performed by the Meat Grading and Certification (MGC) Branch. The hourly fees will be adjusted by this action to reflect the increased cost of providing service, and to ensure that the Federal meat grading and certification program operates on a financially self-supporting basis.

EFFECTIVE DATE: July 13, 2003.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, MGC Branch, telephone number (202) 720–1246 or e-mail *Larry.Meadows@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of the Federal meat grading and certification program that are approximately equal to the cost of providing service. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Nearly 80 percent of operating costs are derived from employee salaries and benefits. The remaining operating costs include travel, training, and administrative expenses. Revenue hours include commitment and noncommitment base hours, premium hours, and holiday hours. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

Despite cost reduction efforts and hourly fee increases in 1998 and 2000, the MGC Branch incurred a $667,000 operating loss in fiscal year (FY) 2001. Furthermore, AMS projects that the MGC Branch will lose an additional $8.6 million through FY 2004 and totally deplete program reserves to the point of deficit operations (*i.e.,* FY 2002, $1.6 million; FY 2003; $2.9 million; and FY 2004, $4.1 million).

In view of these considerations, AMS will increase hourly fees charged to users of the service. The base hourly fee for commitment applicants will increase from $45 to $55. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding Federal legal holidays. The base hourly fee for noncommitment applicants will increase from $52 to $64. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain number of service hours. The premium hourly fee will increase from $57 to $70. The premium hourly fee is charged to applicants when meat grading and certification services: (1) Exceed 8 hours per day; (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday; or (3) are performed any time on Saturday or Sunday, except on Federal legal holidays. The holiday fee will increase from $90 to $110 and is charged to applicants for meat grading and certification services provided on Federal legal holidays.

Executive Order 12866

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

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Administrator of AMS considered the economic impact of this action on small entities and determined that it will not have a significant economic effect on a substantial number of small entities.

AMS, through its MGC Branch, provides voluntary Federal meat grading and certification services to 450 businesses, including 152 livestock slaughterers, 79 facilities that process federally donated products, 74 meat processors, 46 livestock producers and feeders, 28 brokers, 26 organic certifying companies, 25 trade associations, 17 State and Federal entities, and 3 distributors.

Seventy-two percent (*i.e.,* 324) of these businesses are small entities which generate approximately 17 percent of the MGC Branch's revenues. A small entity is defined for the meat packing and processing industry as a company that employs less than 500 employees. No entity, small or large, is obligated to use voluntary Federal meat grading and certification services provided under the authority of the AMA.

Voluntary Federal meat grading and certification services facilitate the orderly marketing of meat and meat products and enable consumers to obtain the quality of meat they desire. Grading services consist of the evaluation of beef, lamb, pork, veal, and calf carcasses for compliance with the grades of the appropriate official U.S. Standard. The MGC Branch grades approximately 22.1 billion pounds of meat each year. Certification services consist of the evaluation of meat and meat products for compliance with specification and contractual requirements. Certification services are regularly used by meat purchasers to ensure that the quality and yields of the products they purchase comply with their stated requirements. The MGC Branch certifies approximately 18.1 billion pounds of meat and meat products each year.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule for the MGC Branch would not

generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. In FY 2001, the MGC Branch incurred a $657,000 operating loss; in FY 2002 operating losses were $1.6 million and, without a fee increase, FY 2003 operating losses are projected to reach $2.9 million. These combined losses will deplete MGC Branch's operating reserve and place the MGC Branch in an unstable financial position that will adversely affect its ability to provide the currently available meat grading and certification services.

Since 1993, the MGC Branch has controlled operating costs by closing three field offices, reducing mid-level supervisory staff by over 50 percent, and reducing the number of support staff by 38 percent. At the same time, the MGC Branch has utilized automated information management systems for data collection, retrieval, and dissemination, applicant billing, and disbursement of employee entitlements. The reduction in field offices, supervisory staff and support personnel and the increased use of automated systems has enabled the MGC Branch to absorb a substantial portion of the operating costs and minimize hourly fee increases over the past 9 years. However, the MGC Branch has continued to lose revenue due to the implementation of more cost-efficient audit-based and pilot certification programs. These programs, while providing an equal or higher level of assurance, require fewer personnel and generate fewer revenue hours when compared to traditional certification services. Accordingly, the overall cost of service to the industry is reduced. Consolidation within the livestock and meat industry has also contributed to a decline in MGC Branch revenue because there are fewer applicants and they are able to perform work more efficiently. Moreover, the MGC Branch operating costs increased due to expenses associated with: (1) Ongoing information system technology upgrades to remain compatible with customer and Agency systems; (2) congressionally mandated salary increases for all Federal Government employees in 2001, 2002, and 2003; (3) inflation of nonsalary operating expenses; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance expenses.

This fee increase will raise the hourly fees charged to users of Federal meat grading and certification services. After implementation, AMS estimates that this action will provide the MGC Branch an additional $401,000 per month in FY 2003. Of this $401,000, small businesses would pay an average of $68,170 or an additional $210 per month ($2,520 per year) per applicant. This fee increase coupled with a projected increase in revenue hours will increase revenues by $4.8 million per year and offset FY 2002 operating losses of $1.6 million and projected FY 2003 losses of $2.9 million. Even with this action, the unit cost for MGC Branch service (revneue/total pounds graded and certified) will remain unchanged at approximately $0.0006 per pound.

AMS projects that, without an hourly fee increase, the MGC Branch will lose an additional $8.6 million through FY 2004 and totally deplete program reserves to the point of deficit operations. Any further reduction in MGC Branch services has the potential to substantially harm small and limited resource firms that rely on grading and certification services to help distinguish and market their products in the global marketplace.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect and will not pre-empt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict. There are no administrative procedures which must be exhausted prior to any judicial challenge to provision of this rule.

Paperwork Reduction Act

This action will not impose any additional reporting or recordkeeping requirements on users of Federal meat grading and certification services.

Comments and Responses

On November 1, 2002, AMS published a proposed rule in the **Federal Register** to increase the fees for Federal meat grading and certification services and requested comments by January 1, 2003. The Agency received three comments.

The first respondent understood that normal inflation and rising operating costs affect operating expenses. However, the respondent opposed the magnitude of the proposed fee increase and called the increase twice as large as needed; indicated that the new MGC Branch staffing guidelines coupled with the proposed fee increase would negatively impact virtually all sectors of the livestock and meat industry; and said the formula used to estimate the per pound cost of providing services was outdated. This respondent also urged the MGC Branch to further streamline services by consolidating branch offices and reducing staff; explore alternative revenue sources; and focus on new technology that would decrease user costs to and improve the accuracy of the grading service.

(**Note:** In August 2002, the MGC Branch implemented recommended in-plant staffing guidelines for high volume, high speed beef grading operations. The recommended staffing guidelines were implemented to safeguard Federal meat graders form repetitive motion injuries.

The second respondent favored a standardized meat grading system with less staff and an automated grading system. the respondent felt that an automated grading system would result in higher grading accuracy and would provide more valuable information to cattle producers who make genetic selections based on yield and grade results.

The third respondent recognized the benefits of the recently implemented staffing guidelines, but failed to see how the proposed fee increase was justified and asked the MGC Branch to look for more ways to reduce costs rather then passing them on to customers.

The comments from all respondents can be summarized as follows: (1) Justify the necessity and magnitude of the fee increase; (2) consider the impact of total MGC Branch costs on the livestock and meat industry; (3) reevaluate the accuracy of the formula used to estimate the per pound cost of providing services; (4) streamline services through MGC Branch office consolidation and staff reduction; and (5) explore alternative revenue sources and new technology to decrease user costs and improve the accuracy and efficiency of meat grading and certification services. The Agency response to each comment is as follows:

(1) *Justify the necessity and magnitude of the fee increase:* The AMA provides for the collection of fees from users of the Federal meat grading and certification services that are approximately equal to the cost of providing service. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. In FY 2001, the MGC Branch incurred a $657,000 operating loss. Without an hourly fee increase, the MGC Branch is projected to lose an additional $8.6 million through FY 2004 and totally deplete program reserves. By law, the program must recover the cost of providing grading and certification services. Since the Agency has implemented every reasonable measure to reduce expenses, a fee increase is the

only avenue available to ensure revenues equal expenses on a sustaining basis.

(2) *Consider the impact total MGC Branch costs on the livestock and meat industry:* The MGC Branch issued recommended staffing guidelines for applicants of beef carcass grading and/or live animal/carcass schedule certification services on August 22, 2002. The recommended staffing guidelines, while increasing the number of Federal meat graders in 4 percent of firms requesting services, were designed to reduce the number of cumulative trauma disorders (CTD) associated with repetitive motions, which is the leading cause of injuries to MGC Branch employees.

Voluntary Federal meat grading and certification services are provided to 450 businesses, including 152 livestock slaughterers, 79 facilities that process federal donated products, 74 meat processors, 46 livestock producers and feeders, 28 brokers, 26 organic certifying companies, 25 trade associations, 17 State and Federal entities, and 3 distributors. Seventy-two percent (*i.e.,* 324) of these businesses are small entities which generate approximately 17 percent of the MGC Branch's revenues. A small entity is defined for the meat packing and processing industry as a company that employs less than 500 employees. AMS estimates that the fee increase will cost small businesses an average of $68,170 or an additional $210 per month ($2,520 per year) per applicant. AMS is very cognitive of the impact that fees charged for meat grading and certification services have over all firms.

(3) *Reevaluate the accuracy of the formula used to estimate the per pound cost of providing services:* In accordance with the AMA, meat grading and certification services are provided on a cost recovery basis. The cost per pound is derived by dividing the total revenue by the total pounds graded and certified within the same time frame. The formula provides an accurate and consistent comparison between the cost of providing service and the tonnage of graded and certified carcasses over time. Since 1993, the amount of product graded and certified per year has increased by 13 billion pounds. Over the same timeframe, the MGC Branch has doubled its revenue hour efficiency and maintained the overall cost per pound of service at $0.0006. We believe this method of calculating the cost per pound for providing grading and certification services is accurate and provides a meaningful way to evaluate efficiency over time.

(4) *Streamline services through MGC Branch office consolidation and staff reduction:* In the past 10 years, the MGC Branch has closed three area offices, reduced mid-level supervisory staff by over 50 percent, and reduced the number of support staff by 38 percent. As part of the current MGC Branch reorganization, the Branch will close the remaining four area offices, eliminate two levels of supervision, and transfer area office functions to the Office of Field Operations (OFO) in Denver, Colorado, by the end of FY 2003. The MGC Branch reorganization also includes plans to restructure the internal operations to more effectively and efficiently service specific program areas. The MGC Branch will maintain two offices: the OFO in Denver, Colorado, and the Headquarter office in Washington, DC. The Agency has determined that, upon completion of the current reorganization, MGC Branch's operations will be streamlined to the maximum extent possible.

(5) *Explore alternative revenue sources and new technology to decrease user costs and improve the accuracy and efficiency of grading and certification services:* By law, the Agency is required to charge fees that equal the cost of providing services. Accordingly, any ''alternative revenue source,'' if required as suggested by the respondent, would be conducted on a full cost recovery basis. AMS has actively participated with the National Cattlemen's Beef Association (NCBA), the beef packing industry, instrument manufacturers, and academia to develop performance standards that can potentially improve grading accuracy and repeatability thought the use of an electronic instrument augmentation system that measures the ribeyes of beef carcasses. This same concept is also being researched for lamb grading augmentations. AMS is also involved with ongoing studies to develop technology that utilizes special equipment to apply environmentally safe yet durable carcass quality and yield grade labels. Additionally, the Agency is working with additional companies to incorporate voice recognition software into this new grade application as well as for general data collection and transmission.

Process Verified Programs such as the Non Hormone Treated Cattle Program and the Pork for the European Union Program provide complete traceability from farm to plate. Additional audit based programs such as the National School Lunch Programs' Canned Meats and Ham Programs are being implemented to improve the overall selection, quality, and cost of the services provided to the industry. In addition, the MGC Branch has worked with members of the Federal purchase and further processing industry to develop several pilot programs that incorporate audit based principles. These programs, while providing the same or a higher level of assurance, require graders to monitor and verify an applicants' entire production process rather than performing an examination on the end product. These audit and audit based programs also allow greater scheduling flexibility, improve operational efficiencies, reduce costs, and provide value-adding services to applicants. The Agency believes that, to the maximum extent possible technology is being utilized to improve the accuracy and cost-effectiveness of meat grading and certification services.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

■ For the reasons set forth in the preamble, 7 CFR part 54 is amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

■ 1. The authority citation for 7 CFR part 54 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 54.27 is amended as follows:
■ a. In paragraph (a), remove ''$52'' and add ''$64'' in its place, remove ''$57'' and add ''$70'' in its place, remove ''$90'' and add ''$110'' in its place.
■ b. In paragraph (b), remove ''$45'' and add ''$55'' in its place, remove ''$57'' and add ''$70'' in its place, remove ''$90'' and add ''$110'' in its place.

Dated: June 27, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–16828 Filed 7–2–03; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1146]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is adopting an

amendment to Regulation Y that would permit bank holding companies to (i) take and make delivery of title to commodities underlying commodity derivative contracts on an instantaneous, pass-through basis; and (ii) enter into certain commodity derivative contracts that do not require cash settlement or specifically provide for assignment, termination, or offset prior to delivery.

DATES: The final rule is effective August 4, 2003.

FOR FURTHER INFORMATION CONTACT: Mark E. Van Der Weide, Counsel (202/452–2263), or Andrew S. Baer, Counsel (202/452–2246), Legal Division. For users of Telecommunications Device for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

The Board's Regulation Y currently authorizes bank holding companies (''BHCs'') to engage as principal in forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on a rate, price, financial asset, nonfinancial asset, or group of assets (other than a bank-ineligible security) (''Commodity Contracts''). A BHC's authority to enter into Commodity Contracts is subject to certain restrictions that are designed to limit the BHC's activity to trading and investing in financial instruments rather than dealing directly in commodities. In particular, Regulation Y provides that a BHC may enter into a Commodity Contract only if (i) the commodity underlying the contract is eligible for investment by a state member bank; *or* (ii) the contract requires cash settlement; *or* (iii) the contract allows for assignment, termination, or offset prior to delivery or expiration (the ''Contractual Offset Requirement''), and the BHC makes every reasonable effort to avoid taking or making delivery of the underlying commodity (the ''Delivery Avoidance Requirement'').[1]

The effect of these restrictions is to allow a BHC to engage as principal in cash-settled derivative contracts involving any type of commodity (other than certain derivative contracts involving bank-ineligible securities) but to limit the authority of a BHC to engage in physically settled derivative contracts. Under these restrictions, a BHC may take and make delivery on physically settled derivatives involving commodities that a state member bank is permitted to own.[2] For all other types of physically settled derivatives,[3] a BHC must make reasonable efforts to avoid delivery, and the contract must have assignment, termination, or offset provisions.

The Bank Holding Company Act (''BHC Act''), as amended by the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338 (1999)) (''GLB Act''), permits a BHC to engage in activities that the Board had determined were closely related to banking, by regulation or order, prior to November 12, 1999. A BHC must conduct these activities in accordance with the terms and conditions contained in such regulations and orders, unless modified by the Board.

In response to requests by Citigroup Inc., New York, New York (''Citigroup''), and UBS AG, Zurich, Switzerland (''UBS''), the Board issued a proposal in March 2003 that would modify the restrictions in Regulation Y to allow BHCs to enter into derivative contracts that typically result in taking and making delivery of title to, but not physical possession of, commodities on an instantaneous, pass-through basis (regardless of whether the contracts contain specific assignment, termination, or offset provisions).[4] The Board received six public comments on the proposal: two from banking organizations, three from financial services trade associations, and one from an individual. The five financial services commenters supported the proposal and offered no general or specific criticisms of the proposal. These commenters believed that the Board's proposal would enhance the ability of banking organizations to serve as financial intermediaries and satisfy customer needs and would improve liquidity and competition in a number of commodity markets.

The individual commenter expressed opposition to the proposal. The commenter asserted that the proposal would reduce the stability of the financial system by permitting banking organizations to engage in risky activities. The commenter also contended that permitting banking organizations to participate in a wider variety of derivatives markets would increase the scope of potential conflicts of interest for banking organizations.

Final Rule

After carefully reviewing the public comments on the proposal, the Board has determined to modify the conditions that the Board imposed in Regulation Y on the permissible derivatives activities of BHCs to permit BHCs to enter into Commodity Contracts that are settled by the BHC receiving and transferring title to the underlying commodity instantaneously, by operation of contract, and without taking physical possession of the commodity. The final rule also modifies the existing condition in Regulation Y that generally prevents BHCs from engaging as principal in a physically settled Commodity Contract unless the contract specifically provides for assignment, termination, or offset prior to delivery.

The Board adopted the restrictions in Regulation Y on the types of Commodity Contracts that a BHC may enter into as principal to reduce the potential that BHCs would become involved in and bear the risks of physical possession, transport, storage, delivery, and sale of bank-ineligible commodities. The restrictions ensure that the commodity derivatives business of a BHC is largely limited to acting as a financial intermediary that facilitates transactions for customers who use or produce commodities or are otherwise exposed to commodity price risk as part of their regular business.

The Regulation Y derivatives restrictions, however, have impeded the ability of BHCs to participate substantially in certain derivatives markets. Notably, in some over-the-counter forward markets (U.S. energy markets, for example), the physically settled derivative contracts traded by market participants do not specifically provide for assignment, termination, or offset prior to delivery and, thus, do not conform to the Contractual Offset Requirement of Regulation Y. Moreover, participants in these markets generally settle contracts by temporarily taking and making delivery of title to the underlying commodities and, thus, do not comply with the Delivery Avoidance Requirement of Regulation Y.

Financial intermediary participants in these markets generally enter into back-to-back derivative contracts with third parties that effectively offset each other.

[1] 12 CFR 225.28(b)(8)(ii)(B).

[2] State member banks may own, for example, investment grade corporate debt securities, U.S. government and municipal securities, foreign exchange, and certain precious metals.

[3] These would include derivative contracts based on, for example, energy-related commodities and agricultural commodities.

[4] *See* 68 FR 12316, March 14, 2003. Citigroup and UBS also have asked the Board to allow financial holding companies to take and make physical delivery of a limited amount of commodities as an activity that is incidental or complementary to engaging as principal in BHC-permissible Commodity Contracts. The Board continues to review these broader requests. Several commenters on the proposed rule expressed support for Board approval of these broader requests by Citigroup and UBS.

That is, financial intermediaries in these markets that enter into a contract to buy, for example, a certain number of barrels of oil from a certain counterparty in a certain future month generally also will enter into another contract, prior to the expiration of the original contract, to sell the same number of barrels of oil to another counterparty in the same future month on substantially identical delivery terms. These market practices typically result in the creation of a chain of contractual relationships that begins with a commodity producer, passes through a number of intermediaries who have entered into matched contracts both to buy and sell the same commodity at the same future time, and ends with a purchaser that intends to take physical delivery of the commodity. On the maturity date of the derivative contracts, the producer will be responsible for making physical delivery and the ultimate buyer will be responsible for accepting physical delivery, while each intermediate participant in the chain will be deemed, by operation of contract, to have instantaneously received and transferred legal title to the commodity.

The Board believes that a BHC that takes title to a commodity on an instantaneous, pass-through basis takes no risk that is greater than or different in kind from the risk that the BHC has as a holder of a commodity derivative contract that meets the current requirements of Regulation Y. Instantaneous receipt and transfer of title to (but not physical possession of) commodities does not appear to involve the usual activities relating to, or risks attendant on, commodity ownership. Instead, such transactions involve the routine operations functions of passing notices, documents, and payments—functions that BHCs regularly perform in their role as financial intermediaries in other markets. Moreover, although BHCs that receive and transfer title to commodities on an instantaneous, pass-through basis face default risks, they are not significantly different than the default risks associated with cash-settled derivative contracts or derivative contracts that include the assignment, termination, or offset provisions currently required by Regulation Y.[5]

The final rule's modifications to Regulation Y will enable BHCs that participate in commodity derivatives markets to provide their customers with a more comprehensive range of financial intermediation and risk management services. In addition, the final rule should enhance the ability of BHCs to compete effectively with non-BHC participants in the commodity derivatives markets (who currently are able to engage in physically settled derivative transactions with customers). Moreover, by expanding the types of derivative transactions in which BHCs may engage, the final rule should augment the capacity of BHCs to understand commodity markets and to diversify the market, credit, and other risks involved in derivatives trading.

In addition, the Board does not believe that the final rule will materially increase the conflicts of interest faced by BHCs that participate in the commodity derivatives markets or result in any other material adverse effects. Although the final rule will enable derivatives affiliates of BHCs to use a wider variety of transaction formats, the rule will not expand the types of commodities that may serve as the basis for derivative transactions engaged in by BHCs. Importantly, banking organizations are subject to a number of Federal banking laws designed to prevent conflicts of interest, including sections 23A and 23B of the Federal Reserve Act and section 106 of the Bank Holding Company Act Amendments of 1970.[6] Moreover, banking organizations that engage in derivatives activities, including the commodity derivatives activities newly authorized by the final rule, would remain subject to the general securities, commodities, and energy laws and the rules and regulations of the Securities and Exchange Commission, the Commodity Futures Trading Commission (''CFTC''), and the Federal Energy Regulatory Commission.[7]

For these reasons, the Board's final rule modifies Regulation Y by changing the Delivery Avoidance Requirement to allow BHCs to take or make delivery of title to commodities underlying commodity derivative transactions on an instantaneous, pass-through basis. A BHC takes and makes delivery of title to a commodity on an instantaneous, pass-through basis for purposes of the final rule only if the BHC takes delivery of title to the commodity from a seller and immediately thereafter makes delivery of title to the commodity to a buyer. Accordingly, the revised Delivery Avoidance Requirement would not provide authority for a BHC to take physical delivery of commodities for use or investment or to make physical delivery of commodities out of the inventory of the BHC. In other words, the BHC must not be the original seller of the commodity in the initial position in the delivery chain or the ultimate buyer of the commodity in the last position in the delivery chain.

The Board's final rule also modifies Regulation Y by changing the Contractual Offset Requirement to permit BHCs to participate in physically settled derivative markets where the standard industry documentation does not allow for assignment, termination, or offset. In particular, the rule would allow BHCs to enter into Commodity Contracts that do not require cash settlement or specifically provide for assignment, termination, or offset prior to delivery so long as the contracts involve commodities for which futures contracts have been approved for trading on a U.S. futures exchange by the CFTC (and the BHC complies with the revised Delivery Avoidance Requirement).[8]

A number of commenters expressed specific support for this modification of the Contractual Offset Requirement. Because derivative contracts based on commodities approved for exchange trading are more likely to have reasonably liquid markets than derivatives based on non-approved commodities, this modified requirement should continue to provide some assurance that BHCs would be able to avoid physical delivery of commodities underlying derivative contracts. This requirement would, therefore, serve the same purpose as the current Contractual Offset Requirement, which facilitates the financial settlement of Commodity Contracts by requiring BHCs to have contractual rights to avoid taking or making delivery of the underlying commodities.[9]

[5] Although one commenter expressed concern that the rule would facilitate excessive risk taking by BHCs, the commenter provided no evidence in support of this position. For the reasons discussed above, the Board does not believe that the rule will expose BHCs to different types or heightened levels of risk.

[6] *See* 12 U.S.C. 371c, 371c–1, 1972.

[7] Although one commenter asserted that the rule would result in increased conflicts of interest for BHCs, the Board is not aware of, and the commenter has not presented, any evidence in support of this position. For the reasons discussed above, the Board does not believe that the rule will materially increase the conflicts of interest faced by BHCs that trade commodity derivatives.

[8] The CFTC publishes annually a list of the CFTC-approved commodity contracts. *See* Commodity Futures Trading Commission, *FY 2001 Annual Report to Congress* 126. With respect to granularity, the Board intends this requirement to include all types of a listed commodity. For example, any type of coal or coal derivative contract would satisfy this requirement, even though the CFTC list specifically approves only Central Appalachian coal.

[9] One commenter asked whether the rule would authorize BHCs to engage in activities incidental to engaging in the derivative transaction types newly authorized by the rule, such as entering into service arrangements with operators of pipelines, power grids, and similar facilities. A BHC may engage in any incidental activities that are necessary to allow the BHC to engage in the derivative transaction

Continued

These modifications to the derivatives provisions in Regulation Y would be effective for all BHCs. The GLB Act preserved the Board's authority to modify the terms and conditions that apply to any BHC activity approved by the Board before November 11, 1999.[10] The Board had authorized BHCs to engage as principal in commodity derivative transactions prior to November 11, 1999. The final rule would represent a relaxation of the current limitations that apply to the conduct of a derivatives activity already approved by the Board under Regulation Y, and would not create a new permissible activity for BHCs.[11]

Plain Language

Section 722 of the GLB Act requires the Board to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the Board has sought to present the final rule in a simple and straightforward manner. No commenter on the proposed rule asked the Board to take additional steps to make the rule easier to understand.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish a final regulatory flexibility analysis with this final rule. The final rule expands the scope of permissible commodity derivatives activities for a bank holding company. A description of the reasons for the Board's decision to issue the final rule and a statement of the objectives of, and legal basis for, the rule are contained in the supplementary material provided above. The final rule applies to bank holding companies regardless of their size and should enhance the ability of all bank holding companies, including small ones, to compete with other providers of financial services in the United States and to respond to changes in the marketplace in which banking organizations compete. The comments received by the Board on the proposed rule did not indicate that the rule would impose burden on bank holding companies of any size.

types newly authorized by the rule. 12 CFR 225.21(a)(2).

[10] *See* 12 U.S.C. 1843(c)(8).

[11] The Board notes that, subsequent to the Board's issuance of the proposed rule, the Office of the Comptroller of the Currency (''OCC'') approved a request by Bank of America, N.A., to engage in customer-driven electricity derivative transactions that involve the transitory transfer of title to electricity. *See* OCC Interpretive Letter No. 962 (April 21, 2003).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

■ 2. Section 225.28 is amended by revising paragraph (b)(8)(ii)(B) to read as follows:

§ 225.28 List of permissible nonbanking activities

* * * * *

(b) * * *

(8) * * *

(ii) * * *

(B) Forward contracts, options, futures, options on futures, swaps, and similar contracts, whether traded on exchanges or not, based on any rate, price, financial asset (including gold, silver, platinum, palladium, copper, or any other metal approved by the Board), nonfinancial asset, or group of assets, other than a bank-ineligible security,[12] if:

(*1*) A state member bank is authorized to invest in the asset underlying the contract;

(*2*) The contract requires cash settlement;

(*3*) The contract allows for assignment, termination, or offset prior to delivery or expiration, and the company—

(*i*) Makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract; or

(*ii*) Receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset; or

(*4*) The contract does not allow for assignment, termination, or offset prior to delivery or expiration and is based on an asset for which futures contracts or options on futures contracts have been approved for trading on a U.S. contract market by the Commodity Futures Trading Commission, and the company—

(*i*) Makes every reasonable effort to avoid taking or making delivery of the asset underlying the contract; or

(*ii*) Receives and instantaneously transfers title to the underlying asset, by operation of contract and without taking or making physical delivery of the asset.

* * * * *

[12] A bank-ineligible security is any security that a state member bank is not permitted to underwrite or deal in under 12 U.S.C. 24 and 335.

By order of the Board of Governors of the Federal Reserve System, June 27, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–16835 Filed 7–2–03; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 910 and 913

[No. 2003–08]

RIN 3069–AB07

Privacy Act and Freedom of Information Act; Implementation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Housing Finance Board (Finance Board) is revising its Privacy Act regulation to reflect an agency reorganization. The responsibilities of the Secretary to the Board of Directors, including administration of the Finance Board's Privacy Act program, have been transferred to the Office of General Counsel (OGC) and an OGC staff member is acting as the Finance Board's Privacy Act Official. The Finance Board also is revising the rule to make it more ''user-friendly'' by using plain language and where appropriate, a question-and-answer format.

Elsewhere in this issue of the **Federal Register**, the Finance Board is publishing a notice that makes corresponding changes to the agency's Privacy Act systems of records. The notice also adds a new system of records covering Office of Inspector General investigative files.

The Finance Board also is amending the fee schedule in its Freedom of Information Act (FOIA) regulation to take into account increased salary and operating costs. The Finance Board determines the amount of the fee it charges to duplicate records under the Privacy Act in accordance with the FOIA fee schedule.

DATES: The interim final rule will become effective on July 3, 2003. The Finance Board will accept comments on the interim final rule in writing on or before September 2, 2003.

ADDRESSES: Send comments by electronic mail to *comments@fhfb.gov*, by facsimile to 202/408–2580, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, Attn: Public Comments. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Senior Attorney-Advisor, Office of General Counsel, by electronic mail at *kayej@fhfb.gov*, by telephone at 202/408–2505, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Effective March 20, 2000, responsibility for administering the Finance Board's FOIA program was transferred to the Office of General Counsel and an OGC staff member began acting as the Finance Board's FOIA Officer. In order to provide a requester with the maximum amount of information available under the law, the Finance Board processes some requests for records under both the FOIA and the Privacy Act. To minimize response time and to ensure consistent and appropriate analysis of agency records, the Finance Board has determined that responsibility and authority for both the FOIA and Privacy Act programs should reside in one agency office. Accordingly, the Finance Board has transferred responsibility for administering the Finance Board's Privacy Act program to the OGC, the office already responsible for running the agency's FOIA program. As part of the transfer, an OGC staff member is acting as the Finance Board's Privacy Act Official. The Privacy Act Official is authorized to make all initial denial determinations under the Finance Board's Privacy Act regulation.

The Finance Board is amending its Privacy Act regulation to reflect the reassignment of responsibility and authority. More specifically, the Finance Board is replacing the term ''Executive Secretary'' and the term ''Finance Board'' with the term ''Privacy Act Official'' where appropriate. The Finance Board also is taking this opportunity to make the rule more ''user-friendly'' by rewriting the rule in plain language and using a question-and-answer format where appropriate.

Elsewhere in this issue of the **Federal Register**, the Finance Board is publishing a notice that makes corresponding changes to the agency's Privacy Act systems of records. Since the Privacy Act rule includes an exemption for Office of Inspector General (OIG) investigative files, the notice adds a new system of records covering OIG investigative records.

II. Analysis of the Interim Final Rule

The interim final rule revises the Finance Board rule implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a), to reflect a reorganization in which responsibility and authority for running the agency's Privacy Act program was transferred to the OGC. The Finance Board also is revising the rule to make it more ''user-friendly'' by using plain language. A more detailed description of the provisions of part 913, as revised, follows.

A. Purpose and Scope

Section 913.2 restates the purpose and scope of part 913, which currently are found in § 913.1. The rule now makes clear that the Finance Board automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA to provide a requester with the maximum amount of information available under the law.

B. Privacy Act Requests

Section 913.3 sets forth the procedures an individual must follow when making a request under the Privacy Act. It covers requests for access to records, for amendment or correction of records, and for an accounting of disclosures by the Finance Board. Section 913.3 includes provisions found currently in §§ 913.3(a)–(c), 913.4, and 913.6(a)–(b). The provision in current § 913.3(d) concerning disclosure of medical records has been deleted.

C. Finance Board Response to Privacy Act Requests

Section 913.4 explains how and when the Finance Board will respond to a Privacy Act request. The revised rule authorizes the Privacy Act Official to make all initial agency determinations, including adverse determinations. Section 913.4 restates provisions found currently in §§ 913.3(e)–(f), 913.5, and 913.6(d)–(e) without other substantive changes.

D. Appeals

Section 913.5 prescribes the procedures individuals must follow if they are dissatisfied with the Privacy Act Official's response to their Privacy Act request. It restates provisions found currently in §§ 913.3(g) and 913.6(f)–(g) with no substantive changes.

E. Fees

Section 913.6 concerns the fees the Finance Board charges to fulfill Privacy Act requests. The fee provision currently is found in § 913.7. The rule makes clear that the Finance Board considers a request to be an agreement to pay all applicable fees unless the requester expressly limits the amount he or she is willing to pay. The Finance Board, which charges only for duplication of records, determines the amount of the fee in accordance with the fee provisions of the agency's FOIA rule, which is codified at 12 CFR 910.9.

The Finance Board is amending the FOIA fee schedule, 12 CFR 910.9(g), to take into account changes in salary and operating costs. More specifically, the hourly search charge for clerical staff has increased from $17.00 to $28.00, for supervisory/professional staff from $34.00 to $53.00, and for computer operators from $34.00 to $48.00. The hourly charge to review records has increased from $34.00 to $53.00. With regard to duplication costs, the Finance Board has eliminated obsolete charges for computer output and microfiche, decreased the cost for diskettes from $5.00 to $.50, and added a $1.00 charge for CD–ROMs. The Finance Board also is making clear that a requester's failure to timely pay FOIA fees assessed by this or any other federal agency may result in a requirement for the requester to pay future fees in advance or the administrative closing of a request.

F. Exemptions

Section 913.7 restates current § 913.8, which describes the records that are exempt from disclosure under the Privacy Act. Finance Board records that are exempt include the following: (1) Certain law enforcement files and files used to determine suitability, eligibility or qualifications for federal civilian employment or federal contracts that are contained in the OIG Investigative Records system of records (FHFB–7); and (2) materials contained in the system of records titled ''Agency Personnel Investigative Records'' (FHFB–6) that would reveal the identity of a source who furnished information to the government under an express

promise that his or her identity would be held in confidence. Since no Finance Board office performs as its principal function activities pertaining to the enforcement of criminal laws, the Finance Board has eliminated references to exemptions provided under paragraph (j)(2) of the Privacy Act. *See* 5 U.S.C. 552a(j)(2).

III. Notice and Public Participation

The Finance Board is promulgating these technical, procedural changes as an interim final rule because it is in the public interest to conform the Finance Board's Privacy Act regulation to an agency reorganization that already has taken effect. Accordingly, the Finance Board for good cause finds that the notice and publication requirements of the Administrative Procedure Act are unnecessary. *See* 5 U.S.C. 553(b)(3)(B). However, because this type of rulemaking generally requires notice and receipt of public comment, the Finance Board will accept written comments on the interim final rule on or before September 2, 2003.

IV. Effective Date

For the reasons stated in part III above, the Finance Board for good cause finds that the interim final rule should become effective on July 3, 2003. *See* 5 U.S.C. 553(d)(3).

V. Regulatory Flexibility Act

The Finance Board is adopting the amendments to parts 910 and 913 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

VI. Paperwork Reduction Act

The interim final rule does not contain any collections of information under the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 910

Administrative practice and procedure, Archives and records, Confidential business information, Federal home loan banks, Freedom of information.

12 CFR Part 913

Administrative practice and procedure, Archives and records, Freedom of information, Privacy.

For the reasons stated in the preamble, the Finance Board amends 12 CFR Ch. IX as follows:

PART 910—FREEDOM OF INFORMATION ACT REGULATION

■ 1. The authority citation for part 910 continues to read as follows:

Authority: 5 U.S.C. 552; 52 FR 10012 (Mar. 27, 1987).

■ 2. Revise §§ 910.9(f)(2) and (4) and (g), and add § 910.9(f)(6), to read as follows:

§ 910.9 Fees.

* * * * *

(f) * * *

(2) To pay fees and interest assessed under this section, a requester shall deliver to the Office of Management, located at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC. 20006, a check or money order made payable to the ''Federal Housing Finance Board.''

* * * * *

(4) The FOIA Officer may require a requester to pay an estimated fee in advance if:

(i) It is determined that the fee will likely exceed $250;

(ii) The requester previously has failed to pay a fee assessed under this section within 30 days of the earlier of the date of the determination under § 910.4 or the date a fee statement was transmitted to a requester; or

(iii) The requester previously has failed to timely pay a fee assessed in accordance with the FOIA regulation of another federal agency.

* * * * *

(6) The FOIA Officer may administratively close a request if the requester previously has failed to pay a fee assessed under this section or in accordance with the FOIA regulation of another federal agency unless the requester can substantiate that the debt was paid.

(g) *Fee schedule.* The Finance Board shall assess fees in accordance with the following schedule:

Search

Supervisory/Professional Staff: $53.00 per hour
Clerical Staff: $28.00 per hour
Computer Operator: $48.00 per hour
Review: $53.00 per hour

Duplication

Photocopies: $.10 per page
Diskettes: $.50 per diskette
CD–ROMs: $1.00 per CD
Transcription of audio tape: $4.50 per page
Certification, seal and attestation: $5.00 per document

Delivery

Facsimile transmission (long distance): long distance charges plus $.25 per page
Facsimile transmission (local): $.25 per call plus $.25 per page
Express delivery service: actual cost

■ 3. Revise 12 CFR part 913 to read as follows:

PART 913—PRIVACY ACT REGULATION

Sec.
913.1 Definitions.
913.2 Purpose and scope.
913.3 How do I make a request under the Privacy Act?
913.4 How will the Finance Board respond to your Privacy Act request?
913.5 What can I do if I am dissatisfied with the Finance Board's response to my Privacy Act request?
913.6 Fees.
913.7 Exemptions.

Authority: 5 U.S.C. 552a.

§ 913.1 Definitions.

For purposes of this part:

Amendment means any correction, addition to or deletion of information in a record.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Individual means a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

Maintain means to keep or hold and preserve in an existing state, and includes the terms collect, use, disseminate and control.

Privacy Act means the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Privacy Act Official means the Finance Board employee who is authorized to make determinations as provided in this part. The mailing address for the Privacy Act Official is: Privacy Act Office, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Record means any item, collection or grouping of information about an individual that the Finance Board maintains within a system of records and contains the individual's name or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

System of records means a group of records the Finance Board maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual. You can find a description of the Finance Board's

systems of records as part of the ''Privacy Act Compilation'' published by the **Federal Register**. You can access the ''Privacy Act Compilation'' in most large reference and university libraries or electronically on the World Wide Web at *http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml.* You also can request a copy of the Finance Board's systems of records from the Privacy Act Official.

Working days do not include Saturdays, Sundays and legal public holidays.

§ 913.2 Purpose and scope.

(a) This Part 913 contains the rules the Finance Board follows under the Privacy Act. The rules apply to all records in systems of records the Finance Board maintains that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves or about and on behalf of another individual as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, request amendment or correction of those records, and request an accounting of disclosures of those records by the Finance Board. Whenever it is appropriate to do so, the Finance Board automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in part 910 of this chapter and this part 913. The Finance Board processes a request under both the Privacy Act and the FOIA so you will receive the maximum amount of information available to you by law.

(b) This part does not entitle you to any service or to the disclosure of any record to which you are not entitled under the Privacy Act. It also does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against the Finance Board.

§ 913.3 How do I make a request under the Privacy Act?

(a) *In general.* You can make a Privacy Act request on your own behalf or on behalf of another individual as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent. To make sure that the Privacy Act Office receives your request without delay, you should include the notation ''Privacy Act Request'' on the front of your envelope and also at the beginning of your request.

(b) *Requests for access to records.* You may make a request for access to a record by appearing in person or by writing directly to the Privacy Act Official. You must describe the record that you want in enough detail to enable the Privacy Act Office to locate the system(s) of records containing it with a reasonable amount of effort. Your request should describe the record sought, the time period in which you believe it was compiled, and the name or identifying number of each system of records in which you believe it is kept.

(c) *Requests for amendment or correction of records.* You may make a request for amendment or correction of a Finance Board record by writing to the Privacy Act Official. Your request should identify each particular record in question and the system(s) of records in which the record is located, describe the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely or complete. You may submit any documentation that you think would be helpful.

(d) *Requests for an accounting of record disclosures.* You may request an accounting of disclosures made by the Finance Board to another person, organization or agency of any record by writing to the Privacy Act Official. Your request for an accounting should identify each particular record in question. An accounting generally includes the date, nature and purpose of each disclosure, as well as the name and address of the person, organization or agency to which the disclosure was made.

(e) *Verification of identity.* When making a Privacy Act request, you must verify your identity in accordance with these procedures to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, the Finance Board cannot process your request.

(1) *Verifying your own identity.* If you make your request in person and your identity is not known to the Privacy Act Official, you must provide either two forms of identification with photographs, or one form of identification with a photograph and a properly authenticated birth certificate. If you make your request by mail, your signature either must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may fulfill this requirement by having your signature on your request letter witnessed by a notary, or including the following statement just before the signature on your request letter: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

(2) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, you must establish:

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address and date and place of birth;

(ii) Your own identity, as required in paragraph (e)(1) of this section;

(iii) That you are the parent or guardian of the individual, which you may prove by providing a properly authenticated copy of the individual's birth certificate showing your parentage or a properly authenticated court order establishing your guardianship; and

(iv) That you are acting on behalf of the individual in making the request.

§ 913.4 How will the Finance Board respond to your Privacy Act request?

(a) *When will the Finance Board respond to my request?* The Privacy Act Official generally will respond to you in writing within 10 working days of receipt of a request that meets the requirements of § 913.3. The Privacy Act Official may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record shipped offsite for storage.

(b) *What will the Finance Board's response include?* The written response will include the Privacy Act Official's determination whether to grant or deny your request in whole or in part and a brief explanation of the reasons for the determination. If you requested access to records, the Privacy Act Official will make the records, if any, available to you. If you requested amendment or correction of a record, the response will describe any amendment or correction made and advise you of your right to obtain a copy of the amended or corrected record, in disclosable form, under this part.

(c) *Adverse determinations.*—(1) *What is an adverse determination?* Adverse determinations consist of the following determinations by the Privacy Act Official:

(i) A determination to withhold any requested record in whole or in part;

(ii) A determination to deny a request to amend or correct a record in whole or in part;

(iii) A determination not to provide an accounting of disclosures;

(iv) A determination that a requested record does not exist or cannot be located;

(v) A determination that what has been requested is not a record subject to the Privacy Act; or

(vi) A determination on any disputed fee matter.

(2) *Responses that include an adverse determination.* If the Privacy Act Official makes an adverse determination with respect to your request, the written response under this section will state that the Privacy Act Official is the person responsible for the adverse determination, that the adverse determination is not a final agency action, and that you may appeal the adverse determination under § 913.5.

§ 913.5 What can I do if I am dissatisfied with the Finance Board's response to my Privacy Act request?

(a) *Appeals.* You can appeal any adverse determination made by the Privacy Act Official in responding to your Privacy Act request. If you wish to seek review by a court of any adverse determination or denial of a request, you first must appeal it under this section.

(b) *How do I make an appeal?* You may make an appeal by submitting a written application giving the reasons why the adverse determination should be overturned within 30 working days of the date of the Privacy Act Official's determination under § 913.4. You should include the notation ''Privacy Act Appeal'' on the front of your envelope and also at the beginning of your application to make sure that the Privacy Act Office receives your appeal without delay.

(c) *When will the Finance Board respond to my appeal?* The Finance Board generally will respond to you in writing within 30 working days of receipt of an appeal that meets the requirements of paragraph (b) of this section. The Finance Board may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record shipped offsite for storage.

(d) *What will the Finance Board's response include?* The written response will include the Finance Board's determination whether to grant or deny your appeal in whole or in part, a brief explanation of the reasons for the determination, and information about the Privacy Act provisions for court review of the determination. If your appeal concerns a request for access to records, the Finance Board will make the records, if any, available to you. If your appeal concerns amendment or correction of a record, the response will describe any amendment or correction made and advise you of your right to obtain a copy of the amended or corrected record, in disclosable form, under this part and your right to file a Statement of Disagreement under paragraph (e) of this section.

(e) *Statements of Disagreement.*—(1) *What is a Statement of Disagreement?* A Statement of Disagreement is a concise written statement in which you clearly identify each part of any record that you dispute and explain your reason(s) for disagreeing with the Finance Board's denial in whole or in part of your appeal to amend or correct that record.

(2) *How do I file a Statement of Disagreement?* You must deliver your Statement of Disagreement to the Privacy Act Official within 30 working days of the Finance Board's denial in whole or in part of your appeal concerning amendment or correction of a record.

(3) *What will the Finance Board do with my Statement of Disagreement?* The Finance Board will place your Statement of Disagreement in the system(s) of records in which the disputed record is maintained. The Finance Board also may append a concise statement of its reason(s) for denying the request to amend or correct the record. The Finance Board will provide a copy of your Statement of Disagreement and its explanation, if any, along with the record whenever the record is disclosed.

§ 913.6 Fees.

(a) *Your request is an agreement to pay fees.* The Finance Board considers your Privacy Act request as your agreement to pay all applicable fees unless you specify a limit on the amount of fees you agree to pay. The Finance Board will not exceed the specified limit without your written agreement.

(b) *How does the Finance Board calculate fees?* The Finance Board will charge a fee for duplication of a record under the Privacy Act in the same way it charges for duplication of records under the FOIA (12 CFR 910.9). The Finance Board will not charge any fees to search for or review records.

§ 913.7 Exemptions.

(a) *What is the effect of an exemption?*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, the Finance Board will not provide you with an accounting of disclosures or make available to you records that are exempt under paragraph (b) of this section.

(2) *Certain law enforcement records.* The Finance Board will disclose a law enforcement record that is subject to an exemption if any right, privilege or benefit to which you would otherwise be entitled by Federal law, or for which you would otherwise be eligible, is denied as a result of the maintenance of the record, except to the extent that disclosure of the record would reveal the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence.

(b) *Which records are exempt?*—(1) *Office of Inspector General Investigative Records.* Pursuant to 5 U.S.C. 552a(k)(2), a record contained in the system of records titled ''Office of Inspector General Investigative Records'' (FHFB–6) is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f), to the extent that the record consists of investigatory material compiled:

(i) For law enforcement purposes; or

(ii) For the purpose of determining suitability, eligibility or qualifications for federal civilian employment or federal contracts, if disclosure of the record would reveal the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence.

(2) *Personnel Investigative Records.* Pursuant to 5 U.S.C. 552a(k)(5), a record contained in the system of records titled ''Personnel Investigative Records'' (FHFB–5) is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f), to the extent that disclosure would reveal the identity of a source who furnished information to the government under an express promise that his or her identity of the source would be held in confidence.

(c) *Why are these records exempt?*—(1) *Office of Inspector General Investigative Records.* The records contained in the system of records titled ''Office of Inspector General Investigative Records'' (FHFB–6) are exempt:

(i) To prevent interference with law enforcement proceedings;

(ii) To avoid an unwarranted invasion of personal privacy by revealing information about third parties such as other subjects of an investigation, law enforcement personnel, witnesses and other sources of information;

(iii) To fulfill commitments made to protect the confidentiality of sources including Federal employees who furnish a complaint or information to the Office of the Inspector General and other sources of information;

(iv) To assure access by the Office of Inspector General to sources of confidential information, including those contained in federal, state and

local criminal law enforcement information systems;

(v) To prevent disclosure of law enforcement techniques and procedures; and

(vii) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(2) *Personnel Investigative Records.* The records contained in the system of records titled ''Personnel Investigative Records'' (FHFB–5) are exempt:

(i) To fulfill commitments made to protect the confidentiality of sources; and

(ii) To assure access to sources of confidential information, including those contained in federal, state and local criminal law enforcement information systems.

Dated: June 19, 2003.

By the Board of Directors of the Federal Housing Finance Board.

John T. Korsmo,

Chairman.

[FR Doc. 03–16560 Filed 7–2–03; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–13–AD; Amendment 39–13219; AD 2003–13–17]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller, Inc., McCauley Propeller Systems, Sensenich Propeller Manufacturing Company, Inc., and Raytheon Aircraft Company Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Hartzell Propeller, Inc., McCauley Propeller Systems, Sensenich Propeller Manufacturing Company, Inc., and Raytheon Aircraft Company (formerly Beech Aircraft Corporation) propellers returned to service by T and W Propellers, Inc., of Chino, CA. This AD requires maintenance actions amounting to an overhaul of the affected propellers. This AD is prompted by the results of a National Transportation Safety Board (NTSB) investigation of a failed propeller blade and subsequent inspections of various propeller models returned to service by T and W Propellers, Inc. We are issuing this AD to detect unsafe conditions that could result in separation of a propeller blade and loss of control of the airplane.

DATES: Effective July 18, 2003.

We must receive any comments on this AD by September 2, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *By mail:* The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: This AD applies to certain Hartzell Propeller, Inc., McCauley Propeller Systems, Sensenich Propeller Manufacturing Company, Inc., and Raytheon Aircraft Company (formerly Beech Aircraft Corporation) propellers returned to service by T and W Propellers, Inc of Chino, CA. This AD requires maintenance actions that amount to an overhaul of the affected propellers. This AD is prompted by the results of an NTSB investigation into the separation of a propeller blade on a Beech 95 Travel Air airplane and subsequent inspections of various propeller models returned to service by T and W Propellers, Inc. The NTSB metallurgical analysis of the failed blade showed that the fracture was approximately 4 inches from the butt end of the propeller blade. Several corrosion pits were found in the propeller inner blade bearing bore at and around the site of crack initiation. While the fatigue failure appeared to have corrosion pits as its initiation site, the size of the crack was approximately 4 inches in the outer surface of the blade shank. A crack of that size is visually detectable. However, the time-since-overhaul (TSO) of the propeller was reported as being zero hours. Documentation from T and W Propellers, Inc. propeller repair station of Chino, CA, indicated that they had complied with Hartzell service documents. However, inspection of the propellers on the airplane involved showed that T and W Propellers, Inc. had not complied with Hartzell service documents. The FAA participated in several subsequent teardowns of other propellers returned to service by T and W Propellers, Inc. We conducted these teardowns on other Hartzell and McCauley propeller models that the public provided voluntarily. The cumulative teardown information provided enough information to substantiate that T and W Propellers, Inc. had introduced unsafe conditions on propellers they had returned to service. These inspections uncovered the following unsafe conditions:

- Extensive corrosion in the internal bearing bore of the blade.
- Absence of corrosion protection (chemical conversion coating and paint) in the internal bearing bore area of the blade.
- Cadmium plating on top of deep corrosion pits.
- Poor cadmium plating and corrosion in the hub.
- Extra phenolic washers that are not approved for use in Hartzell propellers.
- A deteriorated O-ring that was not replaced during the overhaul.
- Failure to properly shot peen propeller parts.

We are requiring certain actions in this AD to detect unsafe conditions that could result in separation of a propeller blade and loss of control of the airplane.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other propellers that T and W Propellers Inc., propeller repair station of Chino, CA, returned to service. We are issuing this AD to detect unsafe conditions that could result in separation of a propeller blade and loss of control of the airplane. This AD requires maintenance actions that amount to an overhaul of certain Hartzell Propeller, Inc., McCauley Propeller Systems, Sensenich Propeller Manufacturing Company, Inc., and Raytheon Aircraft Company propellers returned to service T and W Propellers, Inc., and that are listed by serial number (SN) in this AD.

Recommendation for Propellers Not Identified by SN

This AD currently affects all propellers that we have identified by propeller hub SN from 434 T and W Propellers, Inc. shop work order records. The records range in date from January 8, 2000 to December 30, 2002. This range of dates represents a portion of propellers returned to service by T and W Propellers, Inc. since January 22, 1997, when the FAA issued a repair station certificate to T and W Propellers,

Inc. The NTSB and the FAA have conducted inspections on propellers returned to service by T and W Propellers, Inc. as far back as December 1997 and found unairworthy conditions similar to those in propellers identified by serial number in this AD. The FAA has alerted the public of this through Unapproved Parts Notification No. 2003–00142 issued on March 31, 2003. The FAA recommends that any propeller not in the applicability list for this AD returned to service by T and W Propellers, Inc. comply with paragraph (h) of this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this amendment is impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–13–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.plainlanguage.gov*.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD 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.

For the reasons discussed above, I certify that the 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. 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.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–13–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–13–17 Hartzell Propeller, Inc., McCauley Propeller Systems, Sensenich Propeller Manufacturing Company, Inc., and Raytheon Aircraft Company Propellers: Amendment 39–13219. Docket No. 2003–NE–13–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 18, 2003.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Hartzell Propeller, Inc., McCauley Propeller Systems, Sensenich Propeller Manufacturing Company, Inc., and Raytheon Aircraft Company (formerly Beech Aircraft Corporation) propellers returned to service by T and W Propellers, Inc. of Chino, CA, and that have a propeller hub serial number (SN) listed in Table 1 of this AD. Table 1 follows:

BILLING CODE 4910–13–P

Table 1. Propeller Hub SNs by Manufacturer and Propeller Model

MFG	Propeller Model	Propeller Hub S/N	Number of Blades	Work Order Number	Work Order Date
Beech	278-204	7-2148	2	4077	30-Apr-02
Hartzell	HC-C2YK-1BF	1104	2	4003	14-Mar-02
	HC-E2YR-2RBS	385	2	2696	25-Apr-01
	HC-E2YR-2RBS	400	2	2695	25-Apr-01
	HC-92ZK-2B	453F	2	4160	19-Jun-02
	HC-12MV20-7B	6305	2	2837	11-Jul-01
	BHC-A2VF-1	7102	2	2903	26-Aug-01
	HC-92ZK-2B	837F	2	4161	19-Jun-02
	HC-A2V20-4A1	AK442	2	4259	15-Aug-02
	HC-A2V20-4A1	AK480	2	2664	04-Apr-01
	BHC-C2YF-1BF	AM3003	2	4166	21-Jun-02
	BHC-C2YF-2CLKUF	AN2991E	2	4219	26-Jul-02
	BHC-C2YF-2CKUF	AN4567E	2	4147	10-Jun-02
	BHC-C2YF-2CKUF	AN463E	2	3182	28-Feb-02
	BHC-C2YF-2CLUF	AN4698E	2	4146	10-Jun-02
	BHC-C2YF-2CKLUF	AN4967E	2	3183	28-Feb-02
	BHC-C2YF-2CLKUF	AN6260E	2	4155	18-Jun-02
	HC-C2YK-1BF	AN708	2	2823	02-Jul-01
	BHC-C2YF-2CUKF	AN884E	2	4218	26-Jul-02
	HC-C2YR-4CF	AU10811B	2	3149	06-Feb-02
	HC-C2YR-2CGUF	AU2106E	2	2586	07-Feb-01
	HC-C2YR-2CUF	AU221	2	2687	17-Apr-01
	HC-C2YR-2CGUF	AU2726E	2	4112	17-May-02
	HC-C2YR-2CGLUF	AU3241	2	2856	25-Jul-01
	HC-C2YR-2CUF	AU4554	2	2905	27-Aug-01
	HC-C2YR-2CLEUF	AU5660E	2	4075	24-Apr-02
	HC-C2YR-2CEUF	AU5762	2	2909	30-Aug-01
	HC-C2YR-2CLEUF	AU5899	2	2640	22-Mar-01

HC-C2YR-2CEUF	AU6242	2	3003	01-Nov-01
HC-C2YR-2CLEUF	AU6274	2	2910	30-Aug-01
HC-C2YR-2CLEUF	AU6920	2	3127	21-Jan-02
HC-C2YR-2CUF	AU7349	2	2688	17-Apr-01
HC-C2YR-2CUF	AU7449	2	2643	23-Mar-01
HC-C2YR-2CUF	AU779	2	2686	17-Apr-01
HC-C2YR-2CEUF	AU8144A	2	4156	18-Jun-02
HC-C2YL-1BF	AX982B	2	4355	25-Sep-02
HC-E2YR-2RBSF	BD2678	2	4070	24-Apr-02
HC-E2YL-2BS	BG2900	2	2545	27-Dec-00
HC-E2YL-2BSF	BG953	2	2544	27-Dec-00
HC-E2YR-2RBSF	BP1658E	2	3029	16-Nov-01
HC-E2YR-2RBSF	BP391	2	3073	19-Dec-01
HC-E2YR-2RBSF	BP3969E	2	4307	05-Sep-02
HC-E2YR-2RBSF	BP45E	2	3028	16-Nov-01
HC-E2YR-2RBSF	BP6524E	2	4309	15-Sep-02
HC-E2YR-2RBSF	BP6533E	2	4308	19-Sep-02
HC-E2YR-2RBSF	BP7822	2	3072	19-Dec-01
HC-E2YR-2RBSF	BP8161	2	4071	24-Apr-02
HC-C2YK-1BF	CH11057E	2	3093	07-Jan-02
HC-C2YK-1BF	CH12382E	2	4331	24-Sep-02
HC-C2YK-1BF	CH13146	2	2918	04-Sep-01
HC-C2YK-1BF	CH13164E	2	2685	11-Mar-02
HC-Y2R-1BF	CH13886E	2	4152	17-Jun-02
HC-C2YR-1BF	CH14557E	2	4389	12-Nov-02
HC-C2YK-1BF	CH14698E	2	4250	08-Aug-02
HC-C2YK-1B	CH14918	2	2693	24-Apr-01
HC-C2YR-1BF	CH15324E	2	4371	20-Oct-02
HC-C2YK-1BF	CH15549	2	2980	22-Oct-01
HC-C2YK-1BF	CH16548	2	2656	26-Mar-01
HC-C2YK-1BF	CH1832E	2	4031	02-Apr-01
HC-C2YR-1BF	CH20341	2	3074	24-Dec-01

HC-C2YR-1BF	CH21736	2	3000	30-Oct-01
HC-C2YR-1BF	CH22463E	2	4113	20-May-02
HC-C2YR-1BF	CH244481E	2	3145	05-Feb-02
HC-C2YK-1BF	CH24828E	2	4207	19-Jul-02
HC-C2YK-1BF	CH25304E	2	4261	16-Aug-02
HC-C2YK-1BF	CH25818E	2	4009	18-Mar-02
HC-C2YK-1BF	CH27682	2	3054	10-Dec-01
HC-C2YK-1B	CH2800	2	2829	05-Jul-01
HC-C2YK-1BF	CH2829	2	2825	03-Jul-01
HC-C2YK-1BF	CH28344	2	2673	10-Apr-01
HC-C2YR-1BF	CH29648	2	2593	09-Feb-01
HC-C2YK-1BF	CH2993	2	2644	26-Mar-01
HC-C2YK-1BF	CH3259	2	3060	11-Dec-01
HC-C2YR-1BF	CH35413B	2	3080	03-Jan-02
HC-C2YR-1BF	CH35525B	2	3089	07-Jan-02
HC-C2YK-1BF	CH35587B	2	3186	04-Mar-02
HC-C2YK-1BF	CH35737B	2	4017	25-Mar-02
HC-C2YK-1BF	CH4826E	2	4257	13-Aug-02
HC-C2YK-1BF	CH4891	2	2540	26-Dec-00
HC-C2YK-1BF	CH5827	2	3068	17-Dec-01
HC-C2YK-1BF	CH5868	2	2604	16-Feb-01
HC-C2YK-1BF	CH5953	2	2606	28-Feb-01
HC-C2YK-1B	CH6454E	2	4316	15-Sep-02
HC-C2YK-1B	CH7120	2	2546	02-Jan-01
HC-C2YK-1BF	CH8032	2	4110	17-May-02
HC-C2YR-1BF	CH9804E	2	4180	10-Jul-02
HC-F2YR-1F	CM1111A	2	2684	17-Apr-01
HC-F2YR-1F	CM413	2	2648	28-Mar-01
HC-F2YR-1F	CM610	2	3038	28-Nov-01
HC-F2YR-1F	CM713E	2	4266	20-Aug-02
HC-F2YR-1F	CM952	2	2595	20-Feb-01
HC-E2YR-1BF	DK1067E	2	4337	30-Sep-02

HC-E2YR-1BF	DK1244E	2	4233	31-Jul-02
HC-E2YR-1BF	DK1812A	2	4235	02-Aug-02
HC-C2YR-2CLEUF	DN1287E	2	2982	22-Oct-01
HC-C2YR-4AF	DN3795	2	2959	01-Oct-01
HC-C2YK-1BF	DW317	2	3015	12-Nov-01
HC-M2YR-1BF	EN364E	2	4375	30-Oct-02
HC-M2YR-1BF	EN67	2	2833	10-Jul-01
HC-F2YL-1F	EU7	2	4128	28-May-02
HC-82VF-2B	F1626N	2	2742	18-May-01
HC-82VF-2B	F589	2	2741	18-May-01
HC-M2YR-2CEUF	FB191	2	3061	11-Dec-01
HC-M2YR-2CLEUF	FB199	2	4354	08-Oct-02
HC-M2YR-2CLEUF	FB44	2	2819	28-Jun-01
HC-M2YR-2CLEUF	FB44	2	4391	14-Nov-02
HC-M2YR-1BF	FB69	2	2683	16-Apr-01
HC-M2YR-2CEUF	FB695	2	2543	27-Dec-00
HC-F2YL-2UF	FE149	2	2560	29-Jan-01
HC-F2YL-2UF	FE171	2	2559	29-Jan-01
HC-C2YR-1B	HC4788E	2	4311	05-Sep-02
HC-A2VK-1	J1576	2	2557	08-Jan-01
HC-A2VK-1	J1665	2	4399	19-Nov-02
HC-12V20-7B	P563N	2	3006	05-Nov-01
HC-82VF-1DB	T2527N	2	2862	27-Aug-01
HC-92VF-1	T3299N	2	2790	13-Jun-01
HC-A2VF-2	Y270	2	3039	29-Nov-01
HC-B3R30-2E	AB1930	3	3087	05-Jan-02
HC-B3R30-2E	BB145	3	3086	05-Jan-02
PHC-A3VF-4	BL115	3	4406	26-Nov-02
HC-A3VF-7B	BR802	3	4224	22-Jul-02
PHC-A3VF-4	BR808	3	3049	05-Dec-01
HC-B3TN-3B	BU16047	3	4317	05-Sep-02
HC-B3TN-3B	BU18742	3	4318	05-Sep-02

	HC-B3TN-3D	BUA24344	3	2680	16-Apr-01
	HC-B3TN-2B	BUA24927	3	2985	23-Oct-01
	HC-B3TN-5	BV957	3	2894	20-Aug-01
	HC-B3TN-5FL	BVA7395	3	2679	16-Apr-01
	HC-B3TN-5FL	BVA7497	3	2883	16-Aug-01
	HC-B3TN-5G	BVA7719	3	2901	24-Aug-01
	HC-B3TH-5FL	BVA7759	3	2890	16-Aug-01
	HC-B3TN-5FL	BVA8025	3	4299	04-Sep-02
	HC-C3YR-2UF	CK4851B	3	3021	14-Nov-01
	HC-83V20-2C1	D1380N	3	4049	09-Apr-02
	HC-F3YR-2UF	DA1308	3	2773	06-Jun-01
	HC-F3YR-2UF	DA1332	3	2772	06-Jun-01
	HC-C3YN-2LAUF	DG286	3	4345	02-Oct-02
	HC-C3YN-2LAUF	DG287	3	4345	02-Oct-02
	HC-E3YR-2ATF	DJ10391A	3	4296	03-Sep-02
	HC-E3YR-2ALTF	DJ10394A	3	4297	03-Sep-02
	HC-C3YR-1RF	DY1222	3	4066	16-Apr-02
	PHC-J3YF-2UF	ED1453	3	3017	12-Nov-01
	PHC-J3YF-2UF	ED3055	3	3196	11-Mar-02
	PHC-C3YF-112F	EE1286	3	2936	17-Sep-01
	PHC-C3YF-1RF	EE267	3	4181	03-Jul-02
	PHC-C3YF-1RF	EE89	3	4124	28-May-02
	PHC-L3YF-1RF	FD99A	3	4241	05-Aug-01
	EHC-G3YF-2UF	FJ102	3	4041	04-Apr-02
	EHC-G3YF-2UF	FJ136	3	4040	04-Apr-02
	HC-E3YR-112F	FM1352B	3	4278	15-Jul-02
	HC-B4TN-5HL	E74186	4	2633	20-Mar-01
McCauley	D2A34C58-0	791088	2	2949	26-Sep-01
	B2D34C207-A	804515	2	3048	05-Dec-01
	B2D34C220-B	860844	2	3022	14-Nov-01
	B2D34C207	7910990	2	4262	15-Aug-02
	B2D37C224-B	000387	2	4199	15-Jul-02

41D5926	19627	2	2552	08-Jan-00
2A36C29-AG	59927	2	3097	08-Jan-02
2A36C29-A6	601636	2	4283	28-Aug-02
2AF36C89	61102	2	2744	18-May-01
D2AF36C48-CB	622090	2	2589	09-Feb-01
D2AF36C48-CB	622724	2	2590	09-Feb-01
2A36C23-CPEG	642372	2	2602	23-Feb-01
2A36C23-CPEG	643488	2	2743	18-May-01
2A36C23-D-CEG	653697	2	2676	11-Apr-01
D2AF34C61-XMO	662056	2	2929	10-Sep-01
2A36C23-CPG	666963	2	2555	08-Jan-01
2A34C66-CMNP	673620	2	4386	08-Nov-02
2A34C201-C	696643	2	3023	16-Nov-01
2D34C202	696932	2	2785	12-Jun-01
2A34C66-LMP	697081	2	4302	04-Sep-02
D2AF34C59-NP	698044	2	2989	24-Oct-01
2A34C66-NP	702791	2	2562	29-Jan-01
2AF34C55-NO	703122	2	2607	01-Mar-01
D2AF34C302	704356	2	3034	21-Nov-01
D2A34C58-NO	712830	2	3024	15-Nov-01
2A34C66-NOP	714193	2	2852	23-Jul-01
D2A34C58-NO	714368	2	2880	14-Aug-01
B2D34C208	715634	2	2563	02-Feb-01
2A34C66-NOP	720394	2	2647	28-Mar-01
2A34C66-NP	720799	2	3013	09-Nov-01
2A34C203-C	722149	2	2601	23-Feb-01
2A34C201-C	732285	2	2572	02-Feb-01
2A34C66-NP	734925	2	2892	20-Aug-01
D2AF34C54-NP	736511	2	2889	17-Aug-01
2A36C23-P-E6	738679	2	2705	01-May-01
2A34C66-NP	741202	2	4016	25-Mar-02
2A34C203-C	746751	2	2779	07-Jun-01

D2AF34C306	747857	2	4363	22-Oct-02
2A34C203-C	748419	2	2968	10-Oct-01
2A34C203-C	750668	2	2888	17-Aug-01
2A34C203-C	752018	2	4194	12-Jul-02
D2AF34C303-A	752971	2	2635	19-Mar-01
2A34C66-NP	753264	2	4076	29-Apr-02
2A34C203-C	756299	2	2600	23-Feb-01
2A34C203-C	757569	2	3144	05-Feb-02
B2D34C211	760569	2	4369	26-Oct-02
2A34C201	762799	2	4065	22-Apr-02
2A34C201-C	764227	2	4225	29-Jul-02
2A34C203-C	765022	2	3100	10-Jan-02
B2D34C207	765394	2	2954	28-Sep-01
B2D34C207	767372	2	4223	29-Jul-01
B2D34C212	771038	2	4264	20-Aug-02
C2A34C204-C	772536	2	2806	25-Jun-01
B2D34C212	773467	2	2913	29-Aug-01
2A34C201-C	776485	2	4315	05-Sep-02
B2D34C214	778701	2	2943	22-Sep-01
2A34C66-NP	7810001	2	2691	20-Apr-01
D2AF34C81-O	782537	2	3053	07-Dec-01
B2D34C214	783413	2	2591	12-Feb-01
B2D34C214	783690	2	2832	09-Jul-01
2A34C66-NP	783769	2	3031	19-Nov-01
2A34C216	786531	2	4188	09-Jul-02
D2AF34C307-A	786553	2	4364	22-Oct-02
B2D34C214	787223	2	4084	02-May-02
B2D34C214	787451	2	3132	30-Jan-02
2A34C66-NP	791699	2	2902	26-Aug-01
D2A34C58-0	795621	2	4099	01-May-02
B2D34C220	799931	2	2735	17-May-01
B2D34C220-B	804080	2	2573	05-Feb-01

B2D34C214-A	806619	2	2621	12-Mar-01
2A34C216	807039	2	2955	28-Sep-01
2A34C50-P	810564	2	4203	17-Jul-02
B2D34C214-A	811752	2	2782	11-Jun-01
B2D34C220	812718	2	3120	18-Jan-02
B2D34C214-A	815034	2	2778	07-Jun-01
B2D34C220	815405	2	3101	10-Jan-02
B2D34C220	821006	2	2851	20-Jul-01
B2D34C220-B	822357	2	3137	31-Jan-02
2A34C66-NP	822643	2	4144	10-Jun-02
B2D34C220-B	822736	2	4097	10-May-02
C2A34C204-C	832092	2	3148	06-Feb-02
D2AF34C307-B	851157	2	4373	29-Oct-02
2A34C203-C	891683	2	4270	21-Aug-02
B2334C53-0	900357	2	3169	18-Feb-02
2A36C23-D-G	900959	2	2977	19-Oct-01
2A34C203-C	902086	2	3185	04-Mar-02
B2D34C214	902215	2	3197	12-Mar-02
2A36C23-DG	912711	2	2582	08-Feb-01
2A34C203-B	921416	2	4236	01-Aug-02
B2D34C220-B	930262	2	4108	16-May-02
C2A34C204-C	930476	2	4202	16-Jul-02
D2AF34C81-O	962316	2	3052	07-Dec-01
D3A32C411-C	91220	3	2824	02-Jul-01
3AF32C75-NR	704725	3	2846	16-Jul-01
3PF32C501-A	812753	3	4145	10-Jun-02
3A32C406-B	814842	3	2956	28-Sep-01
3A32C406-B	821868	3	2752	23-May-01
3A32C406	922028	3	2689	18-Apr-01
3AF32C512-C	020337	3	4395	15-Nov-02
D3A32C88-ALMR	68433	3	2774	06-Jun-01
3AF34C92-K	693112	3	2536	21-Dec-00

D3A32C88-LMR	700753	3	2581	07-Feb-01
D3A32C90-MLKN	703346	3	3070	17-Dec-01
D3A32C88-MR	712006	3	4306	05-Sep-02
3AF32C93-NR	712262	3	3007	09-Nov-01
3AF34C92-NPR	725401	3	4253	09-Aug-02
3A32C76-SMR	726830	3	3115	25-Mar-02
D3A32C77-MR	727923	3	2712	01-May-01
3AF32C72-NR	732813	3	2841	12-Jul-01
3AF34C92-PR	732844	3	4366	15-Oct-02
3AF32C75-NR	739402	3	2847	16-Jul-01
3AF32C87-NR	739554	3	2554	08-Jan-01
D3A32C90-MN	761217	3	3190	06-Mar-02
3A32C76-SMR	763448	3	2821	29-Jun-01
D3A32C88-MR	764369	3	2974	16-Oct-01
D3A34C402	765820	3	2930	10-Sep-01
D3A34C402-B	769212	3	4217	26-Jul-02
3AF34C92-NPR	770540	3	2928	10-Sep-01
3AF32C87-NR	7710126	3	2553	05-Jan-01
3A32C76-SMR	772030	3	2641	23-Mar-01
D3A34C403	777494	3	2944	24-Sep-01
3AF32C87-NIR	778133	3	4004	13-Mar-02
3AF32C87-NR	780701	3	2566	01-Feb-01
D3A34C402	783312	3	3116	17-Jan-02
D3A34C402	783736	3	2715	02-May-01
3AF34C92-NPR	783751	3	4252	09-Aug-02
3AF32C87-NIR	788970	3	4039	03-Apr-02
3AF32C93-NR	789159	3	4277	26-Aug-02
3AF32C93-NR	789159	3	3008	09-Nov-01
D3A34C403	790582	3	4096	09-May-02
3A32C76-SMR	7910885	3	4085	02-May-02
3A32C76-SMR	791330	3	3042	03-Nov-01
D3A34C402	792767	3	4244	05-Nov-02

3A32C76-SMR	793937	3	3103	12-Sep-01
3A32C76-UMR	794268	3	2868	31-Jul-01
D3A34C404-C	794365	3	4402	22-Nov-02
D3A34C402-B	794599	3	3035	31-Oct-01
3AF32C87-NR	794951	3	2876	10-Aug-01
3A32C76-UMR	795657	3	2799	20-Jun-01
3AF32C87-NR	795913	3	2984	23-Oct-01
D3A34C402	796810	3	3123	21-Jan-02
3A32C76-UMR	797065	3	2701	27-Apr-01
3A32C76-SMR	801913	3	4238	02-Aug-02
D3A34C402-B	802285	3	2732	14-May-01
D3A34C402	811314	3	4365	24-Oct-02
D3A34C402	811314	3	4365	30-Dec-02
3FF32C501-A	812626	3	3064	14-Dec-01
3FF32C501-A	812685	3	3065	14-Dec-01
3A32C76-SMR	813109	3	4048	09-Apr-02
3AF34C92-PR	813549	3	2629	14-Mar-01
3AF32C87-NR	814072	3	2965	08-Oct-01
3A32C406-B	821336	3	2797	19-Jun-01
3A32C406-B	821659	3	4163	20-Jun-02
3A32C406-B	821864	3	4059	16-Apr-02
D3A34C402-B	822071	3	4131	30-May-02
3AF34C92-PR	851435	3	4367	25-Oct-02
3A32C409	860038	3	2723	08-May-01
3AF32C504-B	861373	3	2983	23-Oct-01
D3A32C409-C	890285	3	2858	25-Jul-01
3A32C406-C	891080	3	4394	15-Nov-02
3AF32C505-B	891968	3	2997	30-Oct-01
3AF32C512-C	901517	3	4393	14-Nov-02
3AF32C512-C	901523	3	4392	14-Nov-02
C3D36C415-C	901743	3	2598	27-Feb-01
3AF32C504-C	910236	3	2964	08-Oct-01

3A32C406-C	910908	3	4401	20-Nov-02
3A32C406-C	921717	3	2551	05-Jan-01
D3A32C409-C	922374	3	2639	31-Mar-01
D3A32C409-C	932027	3	3010	09-Nov-01
3AF34C92-R	932083	3	2653	29-Mar-01
3AF34C92-K	932104	3	2654	29-Mar-01
D3A34C402-C	932139	3	4204	18-Jul-02
3AF32C515	961848	3	4028	01-Apr-02
3AF32C515	961855	3	4029	01-Apr-02
B3D32C417-C	961934	3	4313	09-Sep-02
3AF32C512-C	971389	3	4183	05-Jul-02
3AF32C512-C	971569	3	4182	05-Jul-02
D3A34C402-C	980569	3	2605	27-Feb-01
D3A34C404-C	982779	3	4353	08-Oct-02
1C160/DTM7557	728381	Fixed pitch	2975	17-Oct-01
1C160/DTM7553	734129	Fixed pitch	2549	03-Jan-01
1B90/CM7044	26224	Fixed pitch	2758	29-May-01
1B90/CM7154	32697	Fixed pitch	2757	24-May-01
1A170/DM7651	61112	Fixed pitch	4164	20-Jun-02
1A170/DM7651	62877	Fixed pitch	4098	10-May-02
1A170/DM7653	63366	Fixed pitch	3081	02-Jan-02
1A175/FC8467	66725	Fixed pitch	2734	15-May-01
1C172/EM7654	70354	Fixed pitch	2756	23-May-01
1C172/EM7552	70649	Fixed pitch	2717	04-May-01
1C160/CTM7554	710178	Fixed pitch	2623	12-Mar-01
1C160/CTM7553	710495	Fixed pitch	3090	07-Jan-02
1C160/CTM7553	721463	Fixed pitch	4300	14-Sep-02
1C160/CTM7557	725675	Fixed pitch	2804	22-Jun-01
1C160/CTM7557	725685	Fixed pitch	2737	17-May-01
1C160/DTM7553	726476	Fixed pitch	2731	14-May-01
1C160/DTM7557M1	729559	Fixed pitch	2713	01-May-01
1C160/DTM7555	729858	Fixed pitch	4037	02-Apr-02

1C160/DTM7557	730646	Fixed pitch	4104	15-May-02
1C160/DTM7557M1	733907	Fixed pitch	2580	06-Feb-01
1C160/DTM7557M1	734350	Fixed pitch	4379	31-Oct-02
1C160/DTM7557M1	735796	Fixed pitch	2784	11-Jun-01
1C160/DTM7557M1	735893	Fixed pitch	2583	07-Feb-01
1A103/TCM6958	770810	Fixed pitch	2850	20-Jul-01
1A103/TCM6958	772113	Fixed pitch	2776	06-Jun-01
1A103/TCM6958	773931	Fixed pitch	4276	23-Aug-02
1A103/TCM6958	775216	Fixed pitch	3170	19-Feb-02
1A103/TCM6958	775787	Fixed pitch	2667	05-Apr-01
1A103/TCM6958	776415	Fixed pitch	2740	18-May-01
1A103/TCM6958	776670	Fixed pitch	4122	28-May-02
1C160/DTM7557M1	82161	Fixed pitch	4213	24-Jul-02
1C160/DTM7557M1	BL193	Fixed pitch	2814	27-Jun-01
1C160/DTM7557M1	CC042	Fixed pitch	2599	25-Feb-01
1C160/DTM7557M1	CK208	Fixed pitch	2775	06-Jun-01
1A103/TCM6958	DG020	Fixed pitch	2853	24-Jul-01
1C172/MTM7453	E10939	Fixed pitch	4378	31-Oct-02
1C172/MTM7653	E13563	Fixed pitch	4407	27-Nov-02
1C172/SBTM7359	E17057	Fixed pitch	2625	14-Mar-01
1C172/TM7653	E8301	Fixed pitch	3164	16-Feb-01
1A100/MCM6950	F3506	Fixed pitch	4154	18-Jun-02
1A100/MCM6950	F5414	Fixed pitch	2567	02-Feb-01
1A100/MCM6952	F726	Fixed pitch	4024	01-Apr-02
1A101/HCM6948	G11294	Fixed pitch	2570	02-Feb-01
1A102/OCM6948	K20061	Fixed pitch	2665	04-Apr-01
1A103/TCM6958	KK036	Fixed pitch	4109	17-May-02
1A170/BMS7660	LA044	Fixed pitch	4008	18-Mar-02
1C160/DTM7557M1	MK010	Fixed pitch	2699	25-Apr-01
1A103/TCM6958	NA012	Fixed pitch	2663	20-Apr-01
1A170/EFA7553	P76815	Fixed pitch	2878	13-Aug-01
1C172/MDM7653	P79270	Fixed pitch	4081	02-May-02

	1A170/FFA7563	P80498	Fixed pitch	4240	05-Aug-02
	1A103/TCM6958	PEJ039	Fixed pitch	4126	27-May-02
	1A103/TCM6958	PR775211	Fixed pitch	2786	12-Jun-01
	1C235/LFA7570	QF016	Fixed pitch	4184	08-Jul-00
	1C235/LFA7570	QK008	Fixed pitch	2973	15-Oct-01
	1A103/TCM6958	R771635	Fixed pitch	4087	06-May-02
	1A103/TCM6958	R771922	Fixed pitch	2634	19-Mar-01
	1A103/TCM6958	R772681	Fixed pitch	2879	14-Aug-01
	1A103/TCM6958	R773668	Fixed pitch	2840	12-Jul-01
	1A103/TCM6958	R774213	Fixed pitch	4044	08-Apr-02
	1A103/TCM6958	R774509	Fixed pitch	2803	21-Jun-01
	1A103/TCM6958	R774950	Fixed pitch	2844	09-Jul-01
	1A103/TCM6958	R775395	Fixed pitch	2842	12-Jul-01
	1A103/TCM6958	R776149	Fixed pitch	2759	29-May-01
	1A103/TCM6958	R776150	Fixed pitch	4265	20-Aug-02
	1A103/TCM6958	RG038	Fixed pitch	2657	30-Mar-01
	1A103/TCM6958	RGA026	Fixed pitch	2769	05-Jun-01
	1A103/TCM6958	RP773661	Fixed pitch	4281	27-Aug-02
	1A103/TCM6958	RP774339	Fixed pitch	4282	27-Aug-02
Sensenich	76EM8S5-0-60	11495K	Fixed pitch	4106	16-May-02
	76EM8S5-0-62	12489K	Fixed pitch	2603	26-Feb-01
	76EM8S5-0-60	14861K	Fixed pitch	3121	19-Jan-02
	76EM8S5-0-60	15777K	Fixed pitch	4205	26-Jun-01
	76EM8S510-0-63	18122K	Fixed pitch	4239	17-Jul-02
	M74DM6-0-56	18893	Fixed pitch	2597	21-Feb-01
	76EM8S5-0-60	19209K	Fixed pitch	4014	20-Mar-02
	76EM8S5-0-60	20605K	Fixed pitch	2565	31-Jan-01
	76EM8-0-60	23378K	Fixed pitch	4001	13-Mar-02
	76AM6-2-50	23553	Fixed pitch	4404	25-Nov-02
	76EM8S5-0-60	25510K	Fixed pitch	4170	26-Jun-02
	76EM8S10-0-62	26282K	Fixed pitch	3018	12-Nov-01
	76EM8S14-0-60	26431K	Fixed pitch	2703	30-Apr-01

76EM8S5-0-62	26714K	Fixed pitch	2791	13-Jun-01
76EM8S10-0-62	27114K	Fixed pitch	2867	01-Aug-01
76EM8S5-0-62	27651K	Fixed pitch	4007	15-Mar-02
76EM8S14-0-60	28769K	Fixed pitch	4149	11-Jun-02
76EM8S5-0-60	30364K	Fixed pitch	2767	04-Jun-01
76EM8-0-60	41649K	Fixed pitch	2939	18-Sep-01
74DM6-0-56	A43974	Fixed pitch	2745	21-May-01
74DM6-0-58	A44432	Fixed pitch	4129	30-May-02
74DM6-0-60	A45853	Fixed pitch	4200	16-Jul-02
74DM6-0-60	A47606	Fixed pitch	4139	05-Jun-02
74DM6-0-60	A48300	Fixed pitch	2592	09-Feb-01
74DM6-2-64	A51317	Fixed pitch	2666	04-Apr-01
M69CK-0-52	K1150	Fixed pitch	4209	22-Jul-02
M74DM-0-56	K12256	Fixed pitch	4072	24-Apr-02
72CKS12-0-52	K3278	Fixed pitch	2914	30-Aug-01
74DM6-0-58	K33644	Fixed pitch	2845	16-Jul-01
74DM6S5-0-54	K34229	Fixed pitch	4091	08-May-02
74DM6-2-62	K36552	Fixed pitch	3002	01-Nov-01
74DM6S5-0-54	K37994	Fixed pitch	4320	10-Sep-02
74DM6-0-58	K39012	Fixed pitch	4107	16-May-02
69CKS12-0-50L	K6518	Fixed pitch	2561	29-Jan-01
M74DM-0-58	K6931	Fixed pitch	4132	25-May-02

BILLING CODE 4910–13–C

Unsafe Condition

(d) This AD is prompted by the results of a National Transportation Safety Board (NTSB) investigation of a failed propeller blade and subsequent inspections of various propeller models returned to service by T and W Propellers, Inc. We are issuing this AD to detect unsafe conditions that could result in separation of a propeller blade and loss of control of the airplane.

Compliance: (e) If you have not already performed the actions required by this AD, you must perform the actions within the compliance times specified in this AD.

Required Actions

(f) For propellers listed in Table 1 of this AD, that have been overhauled since being returned to service by T and W Propellers, Inc by an authorized repair station other than T and W Propellers, Inc., no further action is required.

Propellers With Fewer Than 10 Hours Time-in-Service (TIS) Since Return to Service

(g) Before further flight, perform the actions specified in paragraph (h) of this AD on propellers listed in Table 1 of this AD, that have fewer than 10 hours time-in-service (TIS) since return to service by T and W Propellers, Inc. You can find information on performing the actions in the applicable propeller manufacturer's service documentation.

(h) Perform the following actions:

(1) Disassemble,

(2) Clean,

(3) Inspect for the following:

(i) Cracks,

(ii) Corrosion,

(iii) Nicks,

(iv) Scratches,

(v) Blade minimum dimensions,

(vi) Chemical conversion coat or paint or both applied over corrosion,

(vii) Lack of chemical conversion coating,

(viii) Lack of paint on internal surfaces,

(ix) Bolts incorrectly torqued,

(x) Incorrect parts,

(xi) Incorrect installation of parts,

(xii) Reinstallation of parts intended for one-time use, and

(xiii) Lack of proper shot peening.

(4) Repair and replace with serviceable parts, as necessary,

(5) Reassemble and test.

Propellers With 10 Hours or More TIS Since Return to Service

(i) Within 10 hours TIS after the effective date of this AD or one year after the effective date of this AD, whichever is earlier, perform the actions specified in paragraph (h) of this AD on propellers listed in Table 1 of this AD, that have 10 hours or more TIS since return to service by T and W Propellers, Inc. You can find information on performing the actions in the applicable propeller manufacturer's service documentation.

Required Actions Before Installation

(j) After the effective date of this AD, do not install any propeller that has a SN listed in Table 1 of this AD returned to service by T and W Propellers, Inc. unless you have performed paragraph (h) of this AD on the propeller.

Alternative Methods of Compliance (AMOCs)

(k) You must request AMOCs as specified in 14 CFR 39.19. All AMOCs must be approved by the Manager, Chicago Aircraft Certification Office, FAA.

Special Flight Permits

(l) We will not issue special flight permits for propellers with fewer than 10 hours TIS since return to service by T and W Propellers, Inc.

Material Incorporated by Reference

(m) None.

Related Information

(n) The applicable propeller manufacturer's service documents contain instructions for performing the required overhaul actions.

Issued in Burlington, Massachusetts, on June 26, 2003.

Francis A. Favara,

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

[FR Doc. 03–16689 Filed 7–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 02P–0177]

Food Labeling: Health Claims; D-tagatose and Dental Caries

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adopting as a final rule, without change, the provisions of the interim final rule that amended the regulation authorizing a health claim on sugar alcohols and dental caries, i.e., tooth decay, to include the sugar D-tagatose as a substance eligible for the dental caries health claim. FDA is taking this action to complete the rulemaking initiated with the interim final rule.

DATES: This rule is effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 2, 2002 (67 FR 71461), the agency published an interim final rule to amend the regulation in part 101 (21 CFR part 101) that authorizes a health claim on the relationship between sugar alcohols and dental caries (§ 101.80) to include the sugar D-tagatose, a novel food ingredient. Under section 403(r)(3)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i)), FDA issued this interim final rule in response to a petition filed under section 403(r)(4) of the act. Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (and, by delegation, FDA) shall issue a regulation authorizing a health claim only if he or she determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also § 101.14(c)). Section 403(r)(4) of the act sets out the procedures that FDA is to follow upon receiving a health claim petition.

On January 9, 2002, Arla Foods Ingredients amba, DK–8260 Viby, Denmark (the petitioner) filed a petition requesting that the agency: (1) Amend § 101.80 to include the sugar D-tagatose as one of the substances eligible to bear the dental caries health claim; (2) amend § 101.9, the nutrition labeling regulation, to exclude D-tagatose from the definition of ''sugars'' (§ 101.9(c)(6)(ii)), thereby allowing a ''sugar free'' nutrient content claim; and (3) modify the text of § 101.80 because D-tagatose is not a sugar alcohol (Ref. 1). FDA filed the petition for comprehensive review in accordance with section 403(r)(4) of the act on April 19, 2002.

FDA considered the scientific evidence presented in the petition as part of its review of the scientific literature on D-tagatose and dental caries, as well as information previously considered by the agency on the etiology of dental caries and the effects of slowly fermentable carbohydrates. The agency summarized this evidence in the interim final rule (67 FR 71461 at 71463). Based on the available evidence, FDA concluded that dental caries is a disease for which the U.S. population is at risk; D-tagatose is a food, because it contributes taste and other technical effects listed in 21 CFR 170.3(o) to food; the use of D-tagatose in food is safe and lawful; and there is significant scientific agreement among qualified experts that D-tagatose does not promote dental caries (67 FR 71461 at 71462 through 71464). Consequently, FDA published an interim final rule amending § 101.80 to authorize a dental caries health claim for D-tagatose.

As discussed in the interim final rule, the agency believes that it would be false and misleading for D-tagatose containing foods to bear a ''sugar free'' claim because D-tagatose is a sugar (67 FR 71461 at 71466). Consequently, rather than exempting D-tagatose from the definition of ''sugars'' as requested by the petitioner, the agency instead exempted D-tagatose from the ''sugar free'' requirement of § 101.80. To address the incongruity of a sugar-containing food bearing the dental caries health claim and to inform consumers about the uniqueness of D-tagatose as a noncariogenic sugar, we added the requirement that the claim identify D-tagatose as a sugar that, unlike other sugars, does not promote the development of dental caries. Accordingly, although products containing D-tagatose are not permitted to be labeled as ''sugar-free,'' they are authorized to state that D-tagatose sugar does not promote, or may reduce the risk of, tooth decay.

II. Summary of Comments and the Agency's Response

The agency received one comment in support of the petition from a manufacturer prior to publication of the interim final rule. Comments from seven consumers were sent to this docket during the comment period, none of which were relevant to this rulemaking.

Given the absence of contrary evidence on the agency's decisions announced in the interim final rule, FDA is adopting as a final rule, without change, the interim final rule that amended § 101.80 to include D-tagatose as a substance eligible for the dental caries health claim.

III. Environmental Impact

The agency has determined under 21 CFR 25.32(p) 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.

IV. Analysis of Impacts

A. Regulatory Impact Analysis

We have examined the economic implications of this final rule as required by Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates

Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

With this final rule, FDA is adopting without change the provisions of the interim final rule published in the **Federal Register** of December 2, 2002. The interim final rule amended the regulation authorizing a health claim on the relationship between sugar alcohols and dental caries to include the sugar D-tagatose as a substance eligible for the health claim. We assessed the costs and benefits of the interim final rule in that **Federal Register** document (67 FR 71461 at 71468 and 71469). By now reaffirming that interim final rule, FDA has not imposed any new requirements. There are, therefore, no additional costs and benefits associated with this final rule.

B. Regulatory Flexibility Analysis

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

Because this final rule does not impose any new costs on firms, we certify that this final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

C. Unfunded Mandates

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before issuing any final rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this rule, because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $113 million.

V. Paperwork Reduction Act

FDA concludes that the labeling provisions of this final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between D-tagatose and the nonpromotion of dental caries is a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public.'' (5 CFR 1320.3(c)(2)).

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. That section provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce'' certain food labeling requirements, unless an exemption is provided by the Secretary of Health and Human Services (and by delegation, FDA). Relevant to this final rule, one such requirement that States and political subdivisions may not adopt is ''any requirement respecting any claim of the type described in section 403(r)(1) of the act made in the label or labeling of food that is not identical to the requirement of section 403(r) * * *'' (section 403A(a)(5) of the act (21 U.S.C. 343–1(a)(5)). Prior to the effective date of this final rule and the interim rule that preceded it, this provision operated to preempt States from imposing health claim labeling requirements concerning D-tagatose and reduced risk of dental caries because no such requirement had been imposed by FDA under section 403(r) of the act. Under this final rule and the interim rule that preceded it, States are preempted from imposing any health claim labeling requirements for D-tagatose and reduced risk of dental cares that are not identical to those required by this rule. Section 403A(a)(5) of the act displaces both State legislative requirements and State common-law duties. *Medtronic* v. *Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in judgment); *id.* at 510 (O'Connor, J., joined by Rehnquist, C. J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone* v. *Liggett Group, Inc.,* 505 U.S. 504, 521 (1992) (plurality opinion); *id.* at 548–49 (Scalia, J., joined by Thomas, J., concurring in judgment in part and dissenting in part). Although this rule has preemptive effect in that it would preclude States from issuing regulations or adopting or enforcing any requirements, including state tort-law imposed requirements, for health claims about D-tagatose and reduced risk of dental caries that are not identical to the requirements of the interim final rule as adopted by this final rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' Similarly, section 6(c) of the Executive order states that ''to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts state law, unless the agency, prior to the formal promulgation of the regulation * * * consulted with State and local officials early in the process of developing the proposed regulation.'' This requirement, that FDA provide the States with an opportunity for appropriate participation in this rulemaking, has been met. FDA sought input from all stakeholders through publication of the interim final rule in the **Federal Register**. No comments from State or local government entities were received.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

VII. References

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Arla Foods Ingredients amba, ''Petition to Amend the Regulation for 21 CFR Sec. 101.80 to Authorize a Noncariogenicity Dental Health Claim for D-tagatose,'' CP–1, Docket No. 02P–0177, January 9, 2002.

■ Accordingly, the interim final rule amending 21 CFR 101.80 that was published in the **Federal Register** of December 2, 2002 (67 FR 71461), is adopted as a final rule without change.

Dated: June 30, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–16949 Filed 7–1–03; 10:06 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[TTB T.D.–3; Re: Notice No. 957]

RIN 1512–AC70

Seneca Lake Viticultural Area (99R–260P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes the ''Seneca Lake'' viticultural area located in upstate New York. The Seneca Lake viticultural area encompasses about 204,600 acres of land surrounding Seneca Lake within the established Finger Lakes viticultural area. We take this action under the authority of the Federal Alcohol Administration Act and our wine labeling and advertising regulations.

EFFECTIVE DATE: This final rule is effective on September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Kristy Colón, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

What Is Treasury's and TTB's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Title 27 CFR Part 9, American Viticultural Areas, contains the list of approved viticultural areas.

What Is the Definition of an American Viticultural Area?

Section 4.25a(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. The establishment of viticultural areas allows the identification of regions where a given quality, reputation, or other characteristics of the wine is essentially attributable to its geographic origin. The establishment of viticultural areas is intended to help wineries to accurately describe the origin of their wines to consumers and to help consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement of the wine produced there.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition TTB to establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence that the proposed area's growing conditions, such as climate, soils, elevation, physical features, etc., distinguish it from surrounding areas;
- A description of the proposed viticultural area's specific boundaries, based on features found on United States Geological Survey (USGS)-approved maps; and
- A copy of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

With the establishment of this viticultural area, bottlers who use brand names like Seneca Lake may be affected. If you fall in this category, you must ensure that your existing products are eligible to use the name of the viticultural area as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area.

If the wine is not eligible for the appellation, you must change the brand name and obtain approval of a new label. Different rules apply if you label a wine in this category with a label approved prior to July 7, 1986. *See* 27 CFR 4.39(i) for details. Additionally, if you use the viticultural area name on a wine label in a context other than appellation of origin, the general prohibitions against misleading representation in part 4 of the regulations apply.

Rulemaking Proceeding

ATF–TTB Transition

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice. The regulation and taxation of alcohol beverages remains a function of the Department of the Treasury and is the responsibility of TTB. References to the former ATF and the new TTB in this document reflect the time frame, before or after January 24, 2003.

Seneca Lake Petition

ATF received a petition from Ms. Beverly Stamp of Lakewood Vineyards in Watkins Glen, New York, proposing to establish the ''Seneca Lake'' viticultural area. The petitioned area included portions of Schuyler, Yates, Ontario, and Seneca counties in upstate New York and covers approximately 204,600 acres of primarily rural agricultural and forestland. Of that total, 3,756 acres are planted to grapes. There are currently 33 wineries on or near Seneca Lake, one of New York's eleven Finger Lakes. The Cayuga Lake viticultural area lies to the east of the area, and both are entirely within the established Finger Lakes viticultural area.

Notice of Proposed Rulemaking

ATF published a notice of proposed rulemaking regarding the Seneca Lake viticultural area in the October 21, 2002, **Federal Register** as Notice No. 957 (67 FR 64575). In that notice, ATF requested comments by December 21, 2002, from

all interested persons concerning the establishment of this viticultural area. ATF received one comment regarding Notice No. 957 from Representative Amo Houghton of New York's 31st Congressional District. Representative Houghton supported the establishment of the Seneca Lake viticultural area and commented, ''It is the largest, most diverse community of wine producers in the Eastern United States. The twenty-one wineries along the shores of Seneca Lake offer individual and unique expressions from one of America's finest wine districts * * *. Carved by glaciers, and surrounded by vineyards since the mid 1800's—a Seneca Lake viticultural area has already been created through geologic and human history.'' Additionally, Representative Houghton mentioned benefits to the viticultural area's establishment. ''This unique area's recognition by the ATF would perfectly complement an existing regional framework of tourism, research and economic development, and promotion of the Seneca Lake identity and all that it represents. This would be of great benefit to consumers who seek products that allow them [to] capture, in a bottle, the essence of places and regions that enthrall them.''

What Evidence Was Provided To Show the Name ''Seneca Lake'' Is Locally or Nationally Known?

According to the petitioner, Seneca Lake was named after the Seneca people of the Iroquois Nation who lived along its shores hundreds of years ago. Many local places and geographic features are named after the Seneca people. These include, for example, Seneca Lake, Seneca County, the Seneca River, Seneca Castle, Seneca Army Depot, and Seneca Lake State Park. Additionally, the organization known as the Seneca Lake Winery Association includes many of the area's wineries.

To demonstrate that the area is locally and nationally known as ''Seneca Lake,'' the petitioner included several newspaper and magazine articles as evidence of the name's use. In an article from the Rochester, New York Democrat and Chronicle newspaper of November 15, 1999, entitled ''Your Land, Our Land: Finger Lakes in the Fast Lane,'' Ray Spencer, vice president of operations of Glenora Wine Cellars, stated that many ''already refer to Seneca Lake as 'the Napa Valley of the East.' '' In the February 1997 issue of Wines & Vines, a California based magazine, author Philip Hiaring described his visit to the Seneca Lake region and his interviews with winery owners and winemakers.

In addition, Seneca Lake is mentioned in ''The Oxford Companion to the Wines of North America.'' The book states that Seneca Lake is surrounded by more than two-dozen wineries, is one of the two largest Finger Lakes, and is the deepest ''with the greatest heat storing capacity, offering the surrounding hillsides the strongest mesoclimatic benefit.'' While the lake's first winery was built in 1866, the book notes that the emergence of vinifera varieties resulted in an increase of winery openings in the 1980's that brought new momentum to the region's grape-growing industry.

What Boundary Evidence Was Provided?

The boundaries of the Seneca Lake viticultural area encompass about 204,600 acres of largely rural land surrounding Seneca Lake, the largest of upstate New York's eleven Finger Lakes. While some of the road names used in the boundary description do not appear on the submitted USGS maps, the petitioner provided the locally known names of these roads, as well as a more detailed map of the town of Watkins Glen indicating minor roads.

Using roads and streams, the petitioner drew the Seneca Lake viticultural area's boundaries to contain the vineyards influenced by the lake's climatic effect. In addition, the petitioner noted that distinct ridges divide Seneca Lake from its closest neighbor, Cayuga Lake, and the nearly 800-foot elevation change within the 7.5 miles between them gives the two lakes their own microclimates.

What Evidence Relating to Growing Conditions Was Provided?

The ''lake effect'' weather phenomenon makes the Seneca Lake viticultural area a ''unique and superb'' wine-growing region, according to the petitioner. The ''Oxford Companion to Wine'', published by the Oxford University Press, Inc., New York, describes lake effect as ''the year-round influence on vineyards from nearby large lakes which permits vine-growing in the northeast United States and Ontario in Canada despite their high latitude.''

The ''Oxford Companion'' also notes that the lake effect influence on grape vines changes with the seasons. It states that:

> In the winter, the large lakes provide moisture to the prevailing westerly winds, which creates a deep snow cover, protecting vines from winter freeze even in very low temperatures. * * * In spring, the westerly winds blow across the frozen lake and become cooler. These cooler breezes blowing on the vines retard bud-break until the danger of frost has passed. In summer the lake warms up. By autumn/fall, the westerly winds are warmed as they blow across the lake. The warm breezes on the vines lengthen the growing season (balancing the late start to the growing season) by delaying the first frost.

The petitioner also provided an extract from Richard Figiel's book ''Culture in a Glass,'' that describes how the lake effect phenomenon affects the Finger Lakes region. Noting that both Seneca and Cayuga Lakes drop well below sea level, Figiel states that since the lakes are ''(n)arrow slices of water with relatively little surface area, they tend to maintain a stable temperature throughout the year.'' Figiel notes that the depth and heat storing capacity of the lakes act as a large radiator for the surrounding area during the winter months. ''Not only do the lakes take the edge off frigid upstate winters, often keeping vineyards 10–15° warmer than locations just a half mile away,'' the book adds, ''but they also cushion the transitions of spring and fall.'' Figiel also points out that the ''(d)istinct microclimates along the hillsides rising from the lakeshores make it possible to reliably ripen grapes in a region that is generally too cold for viticulture * * *.''

The petitioner stated that it is the size and depth of Seneca Lake that gives the lake its ability to influence the local climate. Additionally, a report provided by the petitioner, entitled ''Viticultural Distinction of Seneca Lake in the New York Finger Lakes'', includes a physical description of Seneca Lake. The report states that, ''Seneca Lake is the largest of the Finger Lakes covering 67.7 square miles. The lake is 35.1 miles long and is an average of 1.9 miles wide with a shoreline of 75.4 miles. It has a volume of 4.2 trillion gallons with a maximum depth of 634 feet. At 150 feet, the water temperature remains at 39°F (4°C) year around. Above that level, the water temperature varies seasonally, but the surface temperature generally does not go below 39.5°F (4°C).'' While Seneca Lake chills down, the petition adds, it rarely freezes during the winter months. The petition also noted that the Seneca region has the longest frost-free period in the Finger Lakes, with a growing season of about 190 days. In contrast, neighboring Cayuga Lake's growing season is only 165 to 170 days long.

Seneca Lake's latent heat storage capacity alters the local climate to such an extent, the petition stated, that grapes can be grown in an area where they otherwise would not survive the cold temperatures of early spring, or the late autumn frosts. Together with the good

air drainage offered by the slopes leading to its shore, the lake's water temperature provides cool breezes in the spring, preventing early bud break in the fruit. In the fall, the lake's warmth delays early frosts, and in the winter it raises temperatures so that bud damage is lessened.

According to the petitioner, it is this ability to protect a crop from extreme temperatures during both the growing and dormant seasons that distinguishes the Seneca Lake viticultural area from the surrounding areas. This lake effect is strongest within about one-half mile of Seneca Lake. For this reason, the more tender vinifera varieties are planted within this zone, while hardier American varieties and hybrids can be planted higher on the slopes. The petitioner added that smaller lakes, even those the size of Cayuga Lake, do not have the same level of latent heat capacity and, therefore, do not modify the local climate to the same extent as Seneca Lake.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

TTB has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

How Does the Regulatory Flexibility Act Apply to This Final Rule?

TTB certifies that the regulations will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Does the Paperwork Reduction Act Apply to This Final Rule?

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

Drafting Information

The principal author of this document is Kristy Colón, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Alcohol and alcoholic beverages, Consumer protection, and Wine.

Authority and Issuance

■ For the reasons discussed in the preamble, title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is amended as follows;

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.128 to read as follows:

§ 9.128 Seneca Lake

(a) *Name.* The name of the viticultural area described in this section is ''Seneca Lake''.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the Seneca Lake viticultural area are 13 United States Geological Survey (USGS) topographic maps (Scale: 1:24,000). The maps are titled:

(1) Burdett Quadrangle (New York—Schuyler Co. 1950 (photoinspected 1976));

(2) Montour Falls Quadrangle (New York 1978 (photorevised 1976));

(3) Beaver Dams Quadrangle (New York 1953);

(4) Reading Center Quadrangle (New York 1950 (photorevised 1978));

(5) Dundee Quadrangle (New York 1942 (photoinspected 1976));

(6) Dresden Quadrangle (New York 1943 (photorevised 1978));

(7) Penn Yan Quadrangle (New York—Yates Co. 1942 (photoinspected 1976));

(8) Stanley Quadrangle (New York 1952);

(9) Phelps Quadrangle (New York—Ontario Co. 1953);

(10) Geneva North Quadrangle (New York 1953 (photorevised 1976));

(11) Geneva South Quadrangle (New York 1953 (photorevised 1978));

(12) Ovid Quadrangle (New York—Seneca Co. 1970); and

(13) Lodi Quadrangle (New York 1942).

(c) *Boundaries.* The Seneca Lake viticultural area surrounds Seneca Lake in upstate New York and is located in portions of Schuyler, Yates, Ontario, and Seneca counties. The boundaries are as follows:

(1) Beginning in the town of Watkins Glen at the State Route 414 bridge over the New York State Barge Canal, follow the Canal south approximately 0.2 miles to the mouth of Glen Creek, on the Burdette, N.Y. map;

(2) Follow Glen Creek upstream (west), crossing onto the Montour Falls, N.Y. map and continuing to the road locally known as the Van Zandt Hollow Road on the Beaver Dams, N.Y. map;

(3) Proceed north on Van Zandt Hollow Road to Cross Road;

(4) Continue north on Cross Road, which changes to Cretsley Road, to its intersection with Mud Lake Road (County Road 23) on the Reading Center, N.Y. map;

(5) Proceed west approximately 0.7 miles on County Road 23 to its intersection with Pre-emption Road;

(6) Then continue north on Pre-emption Road along the Dundee, N.Y., Penn Yan, N.Y. and Dresden, N.Y. maps, for approximately 18 miles to its junction with an unnamed light duty road just east of Keuka Lake Outlet on the Penn Yan, N.Y. map;

(7) Follow the unnamed light duty road across the Keuka Outlet, traveling approximately 0.3 miles to its junction in Seneca Mills with an unnamed light duty road, known locally as Outlet Road;

(8) Follow Outlet Road west along the north bank of the Keuka Outlet approximately 0.6 miles, until the road forks;

(9) At the fork, continue north approximately 1 mile, on an unnamed light duty road know locally as Stiles Road, to its junction with Pre-emption Road.

(10) Then proceed north 14.6 miles on Pre-emption Road across the Stanley, N.Y. map, to an unnamed medium duty road, known locally as County Road 4, on the Phelps, N.Y. map;

(11) Continue west approximately 4.5 miles on County Road 4 to its intersection with Orleans Road in Seneca Castle;

(12) Then proceed north on Orleans Road, which becomes Seneca Castle Road, for 2.1 miles, to Warner Corners where the name of the road changes to Wheat Road;

(13) Continue north from Warner Corners on Wheat Road approximately 1.9 miles to its intersection with State Route 88;

(14) Continue north on State Route 88 approximately 1.4 miles, to its intersection with State Route 96 at Knickerbocker Corner;

(15) Continue east on State Route 96 approximately 10.4 miles, to the intersection with Brewer Road on the Geneva North, N.Y. map;

(16) Follow Brewer Road south approximately 1.8 miles to the intersection with U.S. Route 20/State Route 5;

(17) At the intersection of Brewer Road and U.S. Route 20/State Route 5, continue south approximately 0.1 miles, following an imaginary line to the south bank of the Seneca River;

(18) Follow the south bank of the Seneca River east approximately 0.1 miles to the mouth of the Kendig Creek;

(19) Continue south following the Kendig Creek approximately 3.3 miles to the Creek's intersection with Yellow Tavern Road on the Geneva South, N.Y. map;

(20) Follow Yellow Tavern Road west approximately 0.1 miles, to its intersection with Post Road;

(21) Follow Post Road south approximately 1.4 miles to its junction with State Route 96A;

(22) Then follow State Route 96A south 17.5 miles across the Dresden, N.Y., Ovid, N.Y., and Lodi, N.Y. maps to the village of Lodi;

(23) In Lodi, continue south where State Route 96A changes to S. Main Street and then changes to an unnamed medium duty road (known locally as Center Road-Country Road 137);

(24) Continue south on Center Road-Country Road 137 for approximately 4.9 miles to the Seneca/Schuyler County Line;

(25) Then proceed west 0.5 miles on the county line to Logan Road;

(26) Then proceed 8.6 miles south on Logan Road to State Route 227 (identified by the petitioner as State Route 79) on the Burdette, N.Y. map;

(27) Then proceed approximately 800 feet east on Route 227 to Skyline Drive;

(28) Then proceed south on Skyline Drive for 2.5 miles to an unnamed stream;

(29) Follow the unnamed stream west approximately 0.6 miles to its intersection with State Route 414; and

(30) Continue west on State Route 414 approximately 0.5 miles to the beginning point on the bridge over the New York State Barge Canal.

Dated: May 14, 2003.

Arthur J. Libertucci,

Administrator.

Approved: June 4, 2003.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 03–16703 Filed 7–2–03; 8:45 am]

BILLING CODE 4810–31–P

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Revisions of Regulations Concerning Procedures for Filing Appeals to Regional Directors' Refusal To Issue, or Reissue, Complaint

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The General Counsel of the National Labor Relations Board is amending regulations concerning the procedures for filing an appeal to the General Counsel from a Regional Director's dismissal of an unfair labor practice charge. The revisions, which reflect the actual practice under existing regulations, relieve persons seeking review from being required to file a complete and separate statement apart from the Appeal Form (Form 4767) to perfect an appeal before the Office of Appeals.

DATES: Effective July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, 202–273–1067.

SUPPLEMENTARY INFORMATION: Section 102.19(a) of the National Labor Relations Board's rules provides that if a Regional Director declines to issue complaint, or after withdrawing a complaint refuses to reissue it, the person making the charge may obtain review of the action by filing an appeal (or seeking an extension of time in which to file an appeal) within 14 days of being notified in writing by the Regional Director of the reasons for the decision. Significantly, Section 102.19(a) instructed that the appeal ''shall'' contain a complete statement setting forth the facts and reasons upon which it is based.

Despite the seemingly mandatory language of Section 102.19(a), the Office of Appeals has, for many years, accepted the ''Appeal'' form (Form 4767) attached to the Regional Director's dismissal letter as an appeal and sent acknowledgement to the parties based on a timely filing of such form. The policy was developed in response to the reality that many individual appellants to not have the language skills to perfect a more traditional appeal. Quite often, individuals without benefit of counsel have merely sent the form as indicative of an intent to appeal. These individuals apparently believe that they have perfected an appeal by sending in the form officially attached to the Region's dismissal letter. Since seeking review is the last recourse for a charging party whose charge has been dismissed, the Office of Appeals has maintained a policy that reflects a liberal exercise of discretion in order to afford appeal rights to the broadest population. Although an appeal is more effective if the party seeking review explains the basis for the disagreement with the Region's disposition, failure to include such a statement has not been considered by the Office of Appeals a basis for rejecting an otherwise timely filed appeal. In Grand Rapids Gravel Company, JD–114–02 (issued November 22, 2002),[1] an administrative law judge specifically rejected the assumption ''that the filing of a notice of appeal is legally tantamount to the filing of the actual appeal.'' Skip op. p.20. In order to avoid future challenges concerning the viability of an appeal based only on a notice, the rules and regulations and related forms are being revised to reflect the actual practice. Because of the obvious utility of such a statement, the General Counsel believes most charging parties will continue to submit them, even if it is not mandatory. Once a case is appealed, the same level of review is afforded despite the brevity of an appeal. Because the current practice is fairer to individual, unrepresented charging parties, the language applicable to the procedures of filing an appeal has been revised to reflect that practice and to make the public aware of the actual practice.

For these reasons, the General Counsel is eliminating the requirement that a complete and separate statement must be submitted in order to constitute an appeal from the Regional Director's refusal to issue, or reissue, a compliant.

Administrative Procedure Act

Because the change involves rules of agency organization, procedure or practice, the Agency is not required to publish for comment under Section 553 of the Administrative Procedure Act (5.U.S.C. 553).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) pertaining to regulatory flexibility analysis do to apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes

[1] Cases No. 7–CA–44094 and 7–CA–44211. The Board adopted the decision on February 27, 2003, without exceptions being filed.

merely codify the actual practice under the existing rules.

Small Business Regulatory Enforcement Fairness Act

Because the rule relates to Agency procedure and practice and merely modifies the agency's existing filing procedure, the General Counsel has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply

Paperwork Reduction Act

This part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

■ For the reasons set forth above, the NLRB amends 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). sections 102.143 through 102.155 also issued under Section 5034(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Section 102.19(a) is revised to read as follows:

§ 102.19 Appeal to the general counsel from refusal to issue or reissue.

(a) If, after the charge has been filed, the Regional Director declines to issue a complaint or, having withdrawn a complaint pursuant to § 102.18, refuses to reissue it, he shall so advise the parties in writing, accompanied by a simple statement of the procedural or other grounds for his action. The person making the charge may obtain a review of such action by filing the ''Appeal Form'' with the General Counsel in Washington, DC, and filing a copy of the ''Appeal Form'' with the Regional Director, within 14 days from the service of the notice of such refusal to issue or reissue by the Regional Director, except as a shorter period is provided by § 102.81. If an appeal is taken the person doing so should notify all other parties of his action, but any failure to give such notice shall not affect the validity of the appeal. The person may also file a statement setting forth the facts and reasons upon which the appeal is based. If such a statement is timely filed, the separate ''Appeal Form'' need not be served. A request for extension of time to file an appeal shall be in writing and be received by the office of General Counsel, and a copy of such request filed with the Regional Director, prior to the expiration of the filing period. Copies of the acknowledgement of the filing of an appeal and of any ruling on a request for an extension of time for filing the appeal shall be served on all parties. Consideration of an appeal untimely filed is within the discretion of the General Counsel upon good cause shown.

* * * * *

Dated: Washington, DC, June 25, 2003.

By direction of the Board.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 03–16549 Filed 7–2–03; 8:45 am]

BILLING CODE 7545–01–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 2001–1 CARP DSTRA2]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings by Preexisting Subscription Services

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations adjusting the royalty rates and terms under the Copyright Act for the statutory license for the use of sound recordings by preexisting subscription services for the period January 1, 2002 through December 31, 2007.

DATES: *Effective Date:* August 4, 2003.

Applicability Date: The regulations apply to the license period January 1, 2002 through December 31, 2007.

FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives a copyright owner of sound recordings an exclusive right to perform the copyrighted works publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain non-interactive digital audio services to make digital transmissions of a sound recording under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the license. Moreover, these services may make any necessary ephemeral reproductions to facilitate the digital transmission of the sound recording under a second license set forth in section 112(e) of the Copyright Act.

In accordance with the time frame set forth in the law for the purpose of setting rates and terms for use of the section 114 license by preexisting services, the Copyright Office published a notice in the **Federal Register** on January 9, 2001. 66 FR 1700 (January 9, 2001). This notice initiated a six-month negotiation period the purpose of which was to provide an opportunity for interested parties to set rates and terms for use of the section 114 license as it applied to both the preexisting subscription services and the preexisting satellite digital audio radio services. Unfortunately, no agreement was reached by the end of that period and petitions were filed requesting that the Librarian of Congress convene a Copyright Arbitration Royalty Panel (''CARP'') to determine the rates and terms for both categories of preexisting services.

On January 17, 2003, the Copyright Office received notification of a settlement among the parties contesting rates and terms for preexisting services and a joint petition requesting the Librarian to publish their proposed rates and terms in accordance with § 251.63(b) of the CARP rules, 37 CFR, which provides that—

> [i]n the case of a settlement among the parties to a proceeding, the Librarian may, upon the request of the parties, submit the agreed upon rate to the public in a notice-and-comment proceeding. The Librarian may adopt the rate embodied in the proposed settlement without convening an arbitration panel, provided that no opposing comment is received by the Librarian from a party with an intent to participate in a CARP proceeding.
>
> 37 CFR 251.63(b).

On January 30, 2003, the Copyright Office published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** announcing the settlement and proposing the rates and terms for preexisting services. 68 FR 4744 (January 30, 2003). The NPRM specified that—

[a]ny party who objects to the proposed rates and terms set forth herein must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so. The content of the written challenge should describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge.

68 FR at 4745. Objections to the proposed rates and terms were due by March 3, 2003. On March 3, the Office received an objection from Royalty Logic, Inc. (''RLI'').

Resolution of the Objection to the NPRM

1. RLI's Objection

RLI's March 3, 2003, objection and Notice of Intent to Participate represents RLI's second attempt to enter this proceeding. On January 17, 2003, on the same day that the Copyright Office received notification of the settlement of rates and terms for preexisting services and 14 months after the Office called for Notices of Intent to Participate in this proceeding, RLI filed a motion to accept a late-filed Notice of Intent to Participate. In an Order issued March 14, 2003, the Office denied RLI's motion. The Office applied its two-part test for considering late-filed Notices of Intent to Participate—the disruption to the proceeding by accepting the Notice and whether good cause is shown for it being late—and determined that RLI failed both prongs of the test. Order in Docket No. 2001–1 CARP DSTRA2 (March 14, 2003). We now consider whether there are sufficient grounds to accept RLI's March 3 objection and its new Notice of Intent to Participate.

As discussed above, the NPRM required parties filing an objection to state their interest in the proceeding and the reasons for their challenge. In its March 3 filing, RLI asserts that it is a for-profit corporation that administers music licensing royalties on behalf of hundreds of radio and television stations and that one of its key business objectives ''is to provide these same types of agency services to recording labels and performing artists with respect to the administration and distribution of royalty payments to be made to them pursuant to the statutory licenses under sections 112(e) and 114 of the Copyright Act.'' RLI Objection at 2. In order to enter this business, RLI states that it is necessary for it to be recognized in the rules proposed in the NPRM as a Designated Agent to receive royalties from preexisting services, which it currently is not. RLI notes that it is a recognized Designated Agent for another statutory license in section 114 of the Copyright Act for nonsubscription transmission services, see 37 CFR 260.3(a), but its ''efforts to enroll clients have been substantially impeded by its inability to assure clients of RLI's ability to administer all license payments to which these clients would be entitled.'' *Id.* at 3. Consequently, RLI objects to the NPRM so that further proceedings may be held to include it as a Designated Agent in the Copyright Office rules for distribution of royalties collected from preexisting subscription services.

Having offered the reason for its objection, RLI asserts that it has an interest in this proceeding because it is an entity that distributes royalties, is already a Designated Agent for royalties collected from nonsubscription transmission services, and ''has a stake'' in this proceeding. *Id.* at 5. RLI also offers that having multiple Designated Agents identified in the regulations is beneficial and desirable for copyright owners and performers and will offer them an alternative to SoundExchange, the only Designated Agent in the NPRM. *Id.* at 7–9.

On March 26, 2003, RLI filed a supplement to its March 3, 2003, objection to the NPRM. RLI stated that—

[t]he reason for this Supplement is to inform the Copyright Office that RLI has signed affiliate agreements with copyright owners and performers who wish RLI to serve as their Designated Agent for all Section 112 and 114 statutory licenses, and therefore object to the proposed settlement insofar as it would fail to designate RLI for the collection and distribution of statutory license royalties for the pre-existing subscription services.

RLI Supplement at 1. RLI went on to state that it had ''signed affiliation agreements, effective January 1, 2003, with numerous copyright owners and performers,'' although it declined to identify any of these owners and performers by name. *Id.* at 2. RLI concluded that if the NPRM were adopted, the copyright owners and performers that it now represents would be denied from collecting their preexisting subscription service royalties through RLI and would be forced to deal solely with SoundExchange, the only Designated Agent in the NPRM.

The Recording Industry Association of America, Inc., and, jointly, the American Federation of Musicians of the United States and Canada and the American Federation of Television and Radio Artists opposed RLI's March 26 supplement.

2. RLI's Interest in This Proceeding

The consequences of an objection to a proposal of rates published under § 251.63(b) of the CARP rules are considerable; the Librarian will not adopt the proposed rates and terms and will schedule a CARP proceeding to resolve the matter. However, because a challenge is lodged does not necessarily mean that a CARP must be convened. The Librarian must evaluate the sufficiency of the objection to determine whether the objecting party (1) has a significant interest in the establishment of the rates and terms and (2) has asserted objections to the proposed rates and terms that can be resolved in a CARP proceeding.

The first requirement, that an objecting party have a significant interest in the rates and terms to be established, is derived from the language of the Copyright Act. Section 803(a)(1) of the Act provides that rate proceedings for certain statutory licenses in the Act-particularly sections 112 and 114 which are at issue in this proceeding-begin with the submission of a petition to the Librarian of Congress. In other words, one or more parties may request the Librarian to invoke the CARP process to establish rates and terms by filing a petition or petitions. For each petition received, the statute requires that the ''Librarian of Congress shall, upon the recommendation of the Register of Copyrights, make a determination as to whether the petitioner has such a significant interest in the royalty rate in which an adjustment is requested.'' 17 U.S.C. 803(a)(1). Although there is no legislative history as to what constitutes a ''significant interest,'' the requirement of such makes a great deal of sense. Rate proceedings before a CARP are lengthy, complex, and expensive. It would make no sense to allow an entity with a tentative or collateral interest in the rates to invoke a CARP proceeding; in order to initiate the proceeding, a party should at a minimum have a significant interest in the rates and terms to be established.

While section 803(a)(1) addresses petitions to initiate rate proceedings, there is no similar provision in the Copyright Act related to challenges of proposed rates and terms that are the result of settlement reached by participants in a CARP proceeding. The Copyright Office developed § 251.63(b) of the CARP rules to address circumstances where, due to a settlement, a CARP is no longer necessary. Although § 251.63(b) is a rule and not a statutory provision, it has the specific endorsement of the Congress.

If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless

expense of an arbitration proceeding conducted under (section 114(f)(2) (1995)). Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates embodied in the agreement without convening an arbitration panel.

S. Rep. No. 104–128, at 29 (1995) (citations omitted) (emphasis added). Plainly, for the same reasons that the Librarian must determine whether a petitioner for a rate proceeding has a significant interest in the rates and terms, Congress recognized that a party challenging proposed rates and terms that are the product of a settlement must likewise have a significant, or substantial, interest. Consequently, when the Office published the NPRM in this proceeding, it required any party filing objections to identify its specific interest in the rates and terms to be adjusted to enable the Librarian to determine whether it has a significant (substantial) interest. See 68 FR at 4745 (''[U]nless there is an objection from a person with a significant interest in the proceeding who is prepared and eligible to participate in a CARP proceeding, * * * the Librarian can adopt the rates and terms in the proposed settlement in final regulations without convening a CARP'').

The question then remains: what is a significant or substantial interest in a rate proceeding? The inquiry is a factual one and determinations must be made on a case-by-case basis. Clearly, a copyright owner whose works are being used under a statutory license has a significant interest in a rate setting or adjustment of that license, as does the person or entity using those works under the statutory license. Order in Docket No. 99–6 CARP DTRA (June 21, 2000). An entity that collects the royalties generated under a statutory license on behalf of certain copyright owners whose works are used can have a specific interest in a rate proceeding, but only to the extent that such entity is fully authorized by, and acts on the behalf of, those copyright owners to represent their interests in the rate proceeding. It is through the authorization of these copyright owners, however, and not because of its business or personal interest, that a royalty collection entity gains a specific interest in a rate proceeding.

Likewise, an entity that represents users of copyrighted works can have a specific interest in a rate proceeding, but only gains that specific interest from the authorization of the users it represents. A person or entity that is not a user of a statutory license but expresses a vague or unspecified desire to form a business that would make use of the license or that would benefit indirectly from another's use does not have a specific interest. Order in Docket No. 99–6 CARP DTRA at 2 (June 21, 2000) (''Glaser's interest in what the fees will be is general in that it may affect the profitability of his other businesses, but it is not specific to his person or to his role as a representative of these other businesses.''). And a person or entity that proposes or objects to a rate proceeding solely on the basis of espoused public policy or consumer interest concerns does not have a specific interest.

The NPRM in this proceeding specified that parties objecting to the proposed rates and terms identify their interest in the proceeding no later than March 3, 2003. Review of RLI's March 3, 2003, filing reveals that RLI did not represent any copyright owners entitled to collect royalties from preexisting subscription services under the section 112 and 114 licenses. Rather, it states that its ''key business objective'' is to distribute such royalties in the future and that its participation in this proceeding is necessary to attaining that objective. RLI Objection at 2. This is confirmed in the March 26, 2003, ''supplement'' to its objection where RLI states that it is ''pleased to inform the Copyright Office'' that it had entered into affiliation agreements with unspecified copyright owners and performers whose works it purports are used under the section 112 and 114 licenses. RLI Supplement at 2.[1] Since RLI did not represent copyright owners entitled to royalties from preexisting subscription services under the section 112 and 114 licenses at the time that it filed its objection, and did not have authorization from any copyright owners eligible to receive such royalties to lodge the objection and participate in a CARP proceeding on their behalf, RLI does not have a specific interest in this rate adjustment proceeding.

Moreover, even if the information in RLI's March 26 ''supplement'' were accurate as of March 3, RLI does not even purport to assert that any copyright owners have authorized RLI to represent them in a CARP proceeding or even to object to the proposed rates and terms on their behalf. RLI states its belief that ''[b]y affiliating with RLI and electing to receive their royalties from an agent other than SoundExchange, RLI's client performers and copyright owners are expressing their opposition, through RLI, to the proposed settlement.'' Supplement at 3 (emphasis added). But it is hardly self-evident that the act of affiliating with RLI and electing to use RLI as their agent to receive royalties constituted an authorization by those unidentified copyright owners for RLI to express opposition on their behalf to the proposed rates and terms or to participate in a CARP on their behalf. Indeed, RLI has failed even to identify a single copyright owner whom it represents in asserting its objection to the proposed rates and terms. If RLI wishes to participate in a CARP as a representative of copyright owners, it must identify the copyright owners whom it represents.

RLI also argues that copyright owners and performers should be given a ''competitive choice among agents for the distribution of sound recording performance royalties,'' Objection at 7, and that in amending 17 U.S.C. 114(g) in the Small Webcaster Settlement Act of 2002, Pub. L. 107–321, Congress (1) ''acknowledged and contemplated that more than one entity could serve as a Designated Agent in competition with SoundExchange,'' and (2) provided that ''performers and copyright owners have the absolute right to choose a Designated Agent other than SoundExchange so as to avoid the recoupment of historical litigation and other costs.'' *Id.* at 8 (footnote omitted).

These arguments do not compel the conclusion that RLI has standing to block a settlement and force the determination of rates and terms to be made by a CARP. The fact that more than one entity could serve as Designated Agents does not mean that there necessarily ought to be more than one Designated Agent,[2] or that an aspiring candidate for designation has sufficient interest to participate in its own right in a CARP proceeding. The fact that Congress has recognized that

[1] RLI also faxed replies on April 11 and April 24, 2003, to the objections lodged against its March 26 Supplement. Permission was not sought to submit these replies and they are therefore not considered. Moreover, unless otherwise directed by the Librarian, the rules do not provide for the submission of any pleading by facsimile transmission. 37 CFR 251.44(a).

[2] Indeed, we have expressed skepticism about the benefit of the two-tier structure involving a Receiving Agent and more than one Designated Agent, which adds expense and administrative burdens to a process the purpose of which is to make prompt, efficient, and fair payments of royalties to copyright owners and performers with a minimum of expense. See Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule, 67 FR 45239, 45267 n.46 (July 8, 2003).

there have been and may continue to be more than one Designated Agent also does not mean that this is a necessary or even a desirable outcome. On the other hand, it could be that when Congress, in the Small Webcaster Settlement Act, amended the law to permit SoundExchange to deduct costs incurred in licensing rights under section 114 or to deduct costs incurred as a participant in a CARP proceeding from the royalties that it distributes to copyright owners and performers,[3] it also included the provision denying SoundExchange that right with respect to ''copyright owners and performers who have elected to receive royalties from another designated agent,'' 17 U.S.C. 114(g)(3), in order to give copyright owners and performers a means to avoid being subject to recoupment of SoundExchange's litigation and other costs. Such a provision may have been intended to deter SoundExchange from making excessive deductions, in light of the fact that copyright owners and performers could elect to receive their royalties from an alternative Designated Agent if they were dissatisfied with the extent of SoundExchange's deductions. But even if that is so, it would not give RLI standing to participate on its own behalf in a CARP in order to seek designation as an agent. Instead, it would give a copyright owner or performer entitled to participate in the CARP the power to seek the designation of RLI or some other entity as an alternative Designated Agent.[4]

[3] SoundExchange had sought the power to make such deductions in the previous CARP proceeding setting rates and terms for eligible nonsubscription services, but the Librarian, on the recommendation of the Register, rejected the CARP's terms that would have permitted such deductions. See Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule, 67 FR 45239, 45269 (July 8, 2003)(noting that ''[s]uch activity is beyond the scope of collection and distribution of royalties.'').

[4] In fact, it is not clear that RLI needs to participate in a CARP proceeding or be named in a negotiated settlement in order to act as a designated agent for purposes of collecting royalty fees on behalf of copyright owners and performers who are entitled to receive funds collected pursuant to the section 112 and section 114 licenses. Section 112(e)(2) and section 114(e) of the Copyright Act both expressly provide that a copyright owner of a sound recording may designate common agents to negotiate, agree to, pay, or receive royalty payments. Under these provisions, it is plausible that a copyright owner or performer could designate any agent of his or her choosing (including RLI)—whether or not that agent had been formally designated in the CARP proceeding-to receive royalties from the licensing of digital transmissions and, by doing so, limit the costs of such agents to those specified in section 114(g)(4), as amended by the Small Webcaster Settlement Act of 2002.

3. Determination

For the reasons stated above, the Librarian of Congress determines that RLI does not have a specific interest in the rates and terms proposed in this NPRM and consequently does not have standing to require the convocation of a CARP. RLI's objection is therefore dismissed. Since there were no other objections filed, the Librarian is adopting the proposed rates and terms announced in the NPRM as final.

The following rates and terms for the use of sound recordings by preexisting subscription services under the section 112(e) and section 114 licenses of the Copyright Act shall be effective for the period January 1, 2002 through December 31, 2007.

List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Sound Recordings.

Final Regulation

■ In consideration of the foregoing, the Copyright Office amends part 260 of 37 CFR as follows:

PART 260–RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES' DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND MAKING OF EPHEMERAL PHONORECORDS

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 17 U.S.C. 114, 801(b)(1)

■ 2. The heading of Part 260 is revised to read as set forth above.

■ 3. Section 260.1 is revised to read as follows:

§ 260.1 General

(a) This part 260 establishes rates and terms of royalty payments for the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 114(d)(2), and the making of ephemeral phonorecords in connection with the public performance of sound recordings by nonexempt preexisting subscription services in accordance with the provisions of 17 U.S.C. 112(e).

(b) Upon compliance with 17 U.S.C. 114 and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 114(d)(2).

(c) Upon compliance with 17 U.S.C. 112(e) and the terms and rates of this part, nonexempt preexisting subscription services may engage in the activities set forth in 17 U.S.C. 112(e) without limit to the number of ephemeral phonorecords made.

(d) For purposes of this part, Licensee means any preexisting subscription service as defined in 17 U.S.C. 114(j)(11).

■ 4. Section 260.2 is amended as follows:
■ a. By revising the section heading;
■ b. By revising paragraphs (a) and (b);
■ c. By redesignating paragraph (c) as paragraph (e), and adding a new paragraph (c);
■ d. By adding a new paragraph (d);
■ e. In redesignated paragraph (e)(1)(ii) by adding ''a'' before ''recognized advertising agency';
■ f. In redesignated paragraphs (e)(1)(iii) and (vi), by removing ''Programming Service'' and adding ''programming service'' in its place;
■ g. In redesignated paragraphs (e)(1)(viii) and (e)(2), by removing ''(c)'' and adding ''(e)'' in its place; and
■ h. By adding a new paragraph (f).

The additions and revisions to § 260.2 read as follows:

§ 260.2 Royalty fees for the digital performance of sound recordings and the making of ephemeral phonorecords by preexisting subscription services.

(a) Commencing January 1, 2002 and continuing through December 31, 2003, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.0% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(b) Commencing January 1, 2004 and continuing through December 31, 2007, a Licensee's monthly royalty fee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be 7.25% of such Licensee's monthly gross revenues resulting from residential services in the United States.

(c) Commencing in the year 2003 and continuing through the year 2007, each Licensee making digital performances of sound recordings pursuant to 17 U.S.C. 114(d)(2) and ephemeral phonorecords pursuant to 17 U.S.C. 112(e) shall make an advance payment of $100,000 per year, payable no later than January 20th of each year; Provided, however, that for 2003, the annual advance payment shall be due on August 20, 2003. The annual advance payment shall be nonrefundable, but the royalties due and payable for a given year or any month therein under paragraphs (a) and (b) of this section shall be recoupable

against the annual advance payment for such year; Provided, however, that any unused annual advance payment for a given year shall not carry over into a subsequent year.

(d) A Licensee shall pay a late fee of 1.5% per month, or the highest lawful rate, whichever is lower, for any payment received after the due date. Late fees shall accrue from the due date until payment is received.

* * * * *

(f) During any given payment period, the value of each performance of each digital sound recording shall be the same.

■ 5. Section 260.3 is amended as follows:

■ a. In paragraph (b), by removing ''twentieth'' and adding ''forty-fifth'' in its place;

■ b. By revising paragraphs (c), (d) and (e); and

■ c. By adding a new paragraph (f).

The additions and revisions to § 260.3 read as follows:

§ 260.3 Terms for making payments of royalty fees.

* * * * *

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these fees to those parties entitled to receive such payment according to the provisions set forth at 17 U.S.C. 114(g).

(d) The designated agent may deduct from any of its receipts paid by Licensees under § 260.2, prior to the distribution of such receipts to any person or entity entitled thereto, the reasonable costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that the parties entitled to receive royalty payments according to the provisions set forth at 17 U.S.C. 114(g)(1) & (2) who have authorized a designated agent may agree to deduct such other costs agreed to by such other parties and the designated agent.

(e) Until such time as a new designation is made, SoundExchange, which initially is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent receiving royalty payments and statements of account and shall continue to be designated if it should be separately incorporated.

(f) A Licensee shall make any payments due under § 260.2(a) for digital transmissions or ephemeral phonorecords made between January 1, 2002, and July 31, 2003, to the Designated Agent, less any amounts previously paid by such period to the Recording Industry Association of America, Inc., or SoundExchange by September 15, 2003.

■ 6. Section 260.4 is amended as follows:

■ a. In paragraphs (a) and (b), by removing ''nonexempt subscription digital transmission service'' in each place it appears and adding ''nonexempt preexisting subscription service'' in its place; and

■ b. By revising paragraphs (d)(1) and (e).

The revisions to § 260.4 read as follows:

§ 260.4 Confidential information and statements of account.

* * * * *

(d)(1) Those employees, agents, consultants and independent contractors of the designated agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related hereto, who are not also employees or officers of a sound recording copyright owner or performing artist, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records; and

* * * * *

(e) The designated agent or any person identified in paragraph (d) of this section shall implement procedures to safeguard all confidential financial and business information, including, but not limited to royalty payments, submitted as part of the statements of account, using a reasonable standard of care, but no less than the same degree of security used to protect confidential financial and business information or similarly sensitive information belonging to the designated agent or such person.

* * * * *

§ 260.5 [Amended]

■ 7. Section 260.5(b) is amended by removing ''nonexempt subscription digital transmission service'' and adding ''nonexempt preexisting subscription service'' in its place.

■ 8. Section 260.6 (revised at 68 FR 36470, June 18, 2003, to become effective July 18, 2003) is amended as follows:

■ a. By revising paragraphs (a), (b) and (c);

■ b. In paragraph (f), by removing ''designated agent'' and adding ''entity which made the underpayment'' in its place; and

■ c. In paragraph (g), by removing ''individuals or entities''.

The revisions to § 260.6 read as follows:

§ 260.6 Confidential information and statements of account.

(a) *General.* This section prescribes general rules pertaining to the verification of the payment of royalty fees to those parties entitled to receive such fees, according to terms promulgated by a duly appointed copyright arbitration royalty panel, under its authority to set reasonable terms and rates pursuant to 17 U.S.C. 114 and 801(b)(1), and the Librarian of Congress under his authority pursuant to 17 U.S.C. 802(f).

(b) *Frequency of verification.* Interested parties may conduct a single audit of the entity making the royalty payment during any given calendar year.

(c) *Notice of intent to audit.* Interested parties must submit a notice of intent to audit the entity making the royalty payment with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within 30 days of the filing of the interested parties' notice. Such notification of interest shall also be served at the same time on the party to be audited.

* * * * *

§ 260.7 [Amended]

■ 9. Section 260.7 (amended at 68 FR 36470, June 18, 2003, to become effective July 18, 2003) is amended as follows:

(a) By adding ''collecting'' before ''agent'' the first time it appears;

(b) By removing ''designated'' the second and third time it appears and adding ''collecting'' in its place; and

(c) By removing ''the cost of the administration of the collection and distribution of the royalty fees'' and adding ''any costs deductible under 17 U.S.C. 114(g)(3)'' in its place.

Dated: June 16, 2003.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 03–16727 Filed 7–2–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7522–7]

Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve a correction to the mobile source provisions in the EPA's regional haze rule. This correction is consistent with recommendations of the Western Regional Air Partnership (WRAP). The amendments to the rule are intended to address an emissions projection scenario for mobile sources which was not addressed when EPA published the regional haze rule in 1999.

In the Proposed Rules section of this **Federal Register**, we are proposing approval and soliciting written comment on this action. If adverse written comments are received, we will withdraw the direct final rule and address the comments received in a new final rule; otherwise, no further rulemaking will occur on this approval action.

DATES: In the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a proposed rule that matches the substance of this direct final rule. If the Agency receives adverse comment or a request for public hearing by August 4, 2003, we will withdraw this direct final rule by publishing a timely withdrawal notice in the **Federal Register**. If the Agency receives no adverse comments to the proposed rule, this direct final rule is effective September 2, 2003.

ADDRESSES: All comments should be submitted to Docket No. OAR–2002–0076. When mailing documents, comments, or requests to the EPA Docket Center through the U.S. Postal Service, please use the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room B108; Mail Code: 6102T, Washington, DC 20460. To mail comments or documents through a courier service, the mailing address is: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108; Mail Code: 6102T, Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., excluding legal holidays. Comments can be submitted to the address above, by fax (202) 566–1741, or by e-mail to *A-and-R-Docket@epa.gov.* The voice telephone number is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule or to request a public hearing, contact Kathy Kaufman, Integrated Policies and Strategies Group, (919) 541–0102 or by e-mail *kaufman.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are nine States in the Western United States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and Wyoming) and Indian Tribes within that same geographic area. This action, and an earlier action taken by EPA in 1999, provides these States and Tribes with an optional program to protect visibility in federally protected scenic areas. The portion of the program addressed by today's action is a program for tracking of mobile source emissions under the 1999 rule.

Docket. The EPA has established an official public docket for this action under Docket No. OAR–2002–0076. 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 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 Air Docket in the EPA Docket Center, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying.

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 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 above. Once in the system, select ''search,'' then key in the docket identification number, OAR–2002–0076.

Outline. The contents of today's preamble are listed in the following outline.

I. Background
A. What is the regional haze rule?
B. What are the special provisions for Western States and eligible Indian Tribes in 40 CFR 51.309 of the regional haze rule?
II. Changes to the Mobile Source Provisions of Section 309
A. Why are we changing the mobile source provisions of 40 CFR 51.309?
B. What are the specific changes to the mobile source provisions of 40 CFR 51.309?
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
IV. Statutory Provisions and Legal Authority

I. Background

A. What Is the Regional Haze Rule?

Section 169(A) of the Clean Air Act (CAA) establishes a national goal for protecting visibility in federally-protected scenic areas. These ''Class I'' areas include national parks and wilderness areas. The national visibility goal is to remedy existing impairment and prevent future impairment in these Class I areas, consistent with the requirements of sections 169A and 169B of the CAA.

Regional haze is a type of visibility impairment caused by air pollutants emitted by numerous sources across a broad region. The EPA uses the term regional haze to distinguish this type of visibility problem from those which are

more local in nature. In 1999, EPA issued a regional haze rule requiring States to develop implementation plans that will make ''reasonable progress'' toward the national visibility goal (64 FR 35714, July 1, 1999). The first State plans for regional haze are due between 2003 and 2008. The regional haze rule provisions appear at 40 CFR 51.308 and 40 CFR 51.309.

B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?

The regional haze rule at 40 CFR 51.308 sets forth the requirements for State implementation plans (SIPs) under the regional haze program. The rule requires State plans to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine Western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the Grand Canyon Visibility Transport Commission (GCVTC) during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region. The regulatory provisions at 40 CFR 51.309 are based on the final report issued by the GCVTC in 1996,[1] which included a number of recommended emissions reductions strategies designed to improve visibility in the 16 Class I areas on the Colorado Plateau.

In developing the regional haze rule, EPA received a number of comments on the proposed rule encouraging the Agency to recognize explicitly the work of the GCVTC. In addition, in June 1998, Governor Leavitt of Utah provided comments to EPA on behalf of the Western Governors Association (WGA), further emphasizing the commitment of Western States to implementing the GCVTC recommendations. The WGA's comments also suggested the translation of the GCVTC's recommendations into specific regulatory language. The EPA issued a Notice of Availability during the fall of 1998 requesting further comment on the WGA's proposal and a draft set of regulatory language based upon the WGA's recommendations. Based on the comments received on this **Federal Register** action, EPA developed the provisions set forth in 40 CFR 51.309 that allow the nine Transport Region States and eligible Tribes within that geographic area to implement many of the GCVTC recommendations within the framework of the national regional haze rule.

The provisions in 40 CFR 51.309 comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within this geographic region. The strategy addresses the time period between the year 2003, when the implementation plans are due,[2] and the year 2018. The provisions address emissions from stationary sources, mobile sources, and area sources such as emissions from fires and windblown dust.

II. Changes to the Mobile Source Provisions of Section 309

A. Why Are We Changing the Mobile Source Provisions of 40 CFR 51.309?

1. What is the Basis for the Old Provisions?

The GCVTC determined that mobile source emissions need to be an essential part of a strategy to reduce haze on the Colorado Plateau. Therefore, one element of the GCVTC's strategy, as reflected in 40 CFR 51.309(d)(5), was to address mobile sources emissions. Section 309 also requires States to establish a mobile source emissions budget for each area that significantly contributes to visibility impairment in any of the 16 Class I areas covered by this section of the regulations. At the time the GCVTC made its recommendations (in 1996), mobile source emissions were projected to be lowest in 2005, and to subsequently rise over the course of the first regional haze planning period (*i.e.*, until 2018). Accordingly, section 309 required mobile source emissions budgets to be set using the lowest projected level as a planning objective and performance indicator for each area.

2. What is the Basis for the New Provisions?

Since the GCVTC made its recommendations, new developments have caused mobile source emissions projections to change significantly. Over the past few years, we have promulgated a series of new emissions standards for several different engine types, as well as new standards for diesel fuel content.[3] As a result of these new standards, the WRAP, using EPA's latest models,[4] now projects a significant decline in mobile source emissions throughout the region during the 2003–2018 time period covered by the section 309 plans, particularly from on-road mobile sources. Rather than emissions being lowest in 2005, and subsequently rising, mobile source emissions for all pollutants except sulfur dioxide (SO_2) are expected to decline continuously over the course of the first regional haze planning period.

The projected trends for mobile source emissions of SO_2 differ from those of other pollutants. Emissions reductions from pollutants such as nitrogen oxides (NO_X) and particulate matter (PM) are dependent on technological changes to the onroad fleet and to nonroad engines which are implemented gradually. In contrast, SO_2 emissions reductions are immediately realized when the sulfur content of the fuel changes, because emissions from both new and existing engines immediately drop sharply. We have already published stringent fuel sulfur limits for onroad engines and have proposed stringent fuel sulfur limits for nonroad engines.[5] These Federal fuel sulfur regulations, fully implemented, would together result in a substantial reduction in SO_2 emissions over the 2003–2018 planning period.

B. What Are the Specific Changes to the Mobile Source Provisions of 40 CFR 51.309?

These revisions would change § 51.309(d)(5)(i) to eliminate the requirement for setting mobile source emissions budgets using the lowest projected level as a planning objective and performance indicator for each area. Instead, the new § 51.309(d)(5)(i) would substitute, as the new planning objective and performance indicator, a requirement for statewide inventories to show a continuous decline in emissions of each pollutant of concern over the planning period. Should mobile source emissions not decline as expected, States would have to revise their SIPs to include any feasible additional strategies. This new requirement conforms to trends that are currently projected.

In addition, in light of the continuous decline in mobile source emissions expected over the entire region, these revisions also eliminate the unneeded requirement in § 51.309(5)(ii) and (iii) to

[1] *Recommendations for Improving Western Vistas.* GCVTC, June 10, 1996.

[2] Indian Tribes are given the flexibility under EPA regulations to submit implementation plans and opt into the program after the 2003 deadline.

[3] *See* 62 FR 25355, (May 8, 1997); 63 FR 18978, (April 16, 1998); 63 FR 56968, (October 23, 1998); 64 FR 73300, (December 29, 1999); 65 FR 59895, (October 6, 2000); 66 FR 5001, (January 18, 2001); 67 FR 68241, (November 8, 2002); and 68 FR 9745, (February 28, 2003).

[4] MOBILE6 and MOBILE6.2 for on-highway vehicles and the NONROAD model for nonroad vehicles.

[5] *See http://www.epa.gov/nonroad/* [nonroad diesel proposal, signed 4/15/03].

determine whether mobile sources emissions constitute a significant contributor to haze in a given State. The revisions retain the requirements for statewide inventories and performance demonstrations.

Finally, the revisions contain a backstop provision, requested by the WRAP, to address any potential concerns regarding SO_2 from nonroad sources in the event that recently proposed Federal standards, referenced above, are not finalized. The backstop provision, contained in the new § 51.309(d)(5)(i)(B), requires States to assess the need for any long-term strategies to address SO_2 from nonroad mobile sources by no later than December 31, 2008. In determining whether to revise their SIPs to address SO_2 from mobile sources, States may consider the emissions reductions achieved—or anticipated—by any Federal standards that are in place addressing fuel sulfur content for nonroad engines.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, we have determined that this direct final rule is not a significant regulatory action.

B. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The OMB has approved the information collection requirements contained in the final Regional Haze regulations (64 FR 35714, July 1, 1999) and has assigned OMB control number 2060–0421 (EPA ICR No. 1813.04).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rulemaking on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA Web site at *http://www.sba.gov/size/indextableofsize.html)*; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule eliminates certain comprehensive requirements to address mobile source emissions that EPA now considers to be unnecessary. Specifically, as discussed above, this rule eliminates the requirements in § 51.309(5)(ii) and (iii) to determine whether mobile sources emissions constitute a significant contributor to haze in a given State, and for those States with areas that meet this significance criterion, to establish mobile source emissions budgets. The rule requires emissions reductions consistent with the downward trend in mobile source emission inventories that is currently projected, based on regulations that have already been promulgated. We have therefore concluded that today's rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.''

A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

Because the entire program under 40 CFR 51.309, including today's amendments, is an option that each of the States may choose to exercise, these revisions to section 309 do not establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. The program is not required and, thus is clearly not a ''mandate.'' Moreover, as explained above, today's rule eliminates certain requirements and will overall reduce any regulatory burdens. Accordingly, this rule will not result in expenditures to State, local, and Tribal governments, in the aggregate, or the private sector, of $100 million or more in any given year. Thus EPA is not obligated, under section 203 of UMRA, to develop a small government agency plan.

We believe that this rulemaking is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule (64 FR 35761, July 1, 1999). However, today's direct final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local or tribal governments or the private sector. In addition, the program contained in 40 CFR 51.309, including today's revisions, is an optional program.

E. Executive Order 13132: Federalism

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

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing a regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described above, this rule contains minor revisions to section 309 of the regional haze rule which will reduce any regulatory burden on the States. In addition, section 309 is an optional program for States. The minor revisions to section 309, accordingly, do not directly impose significant new requirements on State and local governments. Moreover, even if today's revisions did have federalism implications, these revisions would not impose substantial direct compliance costs on State or local governments, nor would they preempt State law. Thus, Executive Order 13132 does not apply to this rule.

Consistent with EPA policy, we nonetheless did consult with representatives of State and local governments in developing this rule. This rule directly implements specific recommendations from the WRAP, which includes representatives from all the affected States.

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

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

This rule eliminates certain requirements and will overall reduce any regulatory burden on the Tribes. Moreover, the section 309 program is an optional program for Tribes within the same geographic region as the WRAP states. Accordingly, this rule will not have tribal implications. In addition, this rule directly implements specific recommendations from the WRAP, which includes representatives of Tribal governments. Thus, although the rule does not have tribal implications, representatives of Tribal governments have had the opportunity to provide input into development of the recommendations forming its basis.

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

Executive Order 13045: ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The requirements of Executive Order 12898 have been previously addressed to the extent practicable in the Regulatory Impact Analysis (RIA) for the regional haze rule (cited above), particularly in chapters 2 and 9 of the RIA. Today's direct final rule makes no changes that would have a disproportionately high and adverse human health or environmental effect on minorities and low-income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, 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. The 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(a).

IV. Statutory Provisions and Legal Authority

Statutory authority for today's direct final rule comes from sections 169(a) and 169(b) of the CAA (42 U.S.C. 7545(c) and (k)). These sections require EPA to issue regulations that will require States to revise their SIPs to ensure that reasonable progress is made toward the national visibility goals specified in section 169(A).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 27, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set forth in the preamble, part 51 of title 40, Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7492, 7601, and 7602.

Subpart P—Protection of Visibility

■ 2. Section 51.309 is amended by revising paragraphs (b)(6) and (d)(5)(i), deleting paragraphs (d)(ii) and (d)(iii), and renumbering (d)(iv) to (d)(ii), to read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b)(6) *Continuous decline in total mobile source emissions* means that the projected level of emissions from mobile sources of each listed pollutant in 2008, 2013, and 2018, are less than the projected level of emissions from mobile sources of each listed pollutant for the previous period (*i.e.*, 2008 less than 2003; 2013 less than 2008; and 2018 less than 2013).

* * * * *

(d)(5)(i) Statewide inventories of onroad and nonroad mobile source emissions of VOC, NO_X, SO_2, $PM_{2.5}$, elemental carbon, and organic carbon for the years 2003, 2008, 2013, and 2018.

(A) The inventories must demonstrate a continuous decline in total mobile source emissions (onroad plus nonroad; tailpipe and evaporative) of VOC, NO_X, $PM_{2.5}$, elemental carbon, and organic carbon, evaluated separately. If the inventories show a continuous decline in total mobile source emissions of each of these pollutants over the period 2003–2018, no further action is required as part of this plan to address mobile source emissions of these pollutants. If the inventories do not show a continuous decline in mobile source emissions of one or more of these pollutants over the period 2003–2018, the plan submission must provide for an implementation plan revision by no later than December 31, 2008 containing any necessary long-term strategies to achieve a continuous decline in total mobile source emissions of the pollutant(s), to the extent practicable, considering economic and technological reasonableness and Federal preemption of vehicle standards and fuel standards under title II of the CAA.

(B) The plan submission must also provide for an implementation plan revision by no later than December 31, 2008 containing any long-term strategies necessary to reduce emissions of SO_2 from nonroad mobile sources, consistent with the goal of reasonable progress. In assessing the need for such long-term strategies, the State may consider emissions reductions achieved or anticipated from any new Federal standards for sulfur in nonroad diesel fuel.

(ii) [*text of (iv) retained same as before*]

[FR Doc. 03–16922 Filed 7–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0135; FRL–7313–7]

Fludioxonil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fludioxonil in or on Brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; carrot; herb, fresh, subgroup 19A; herb, dried, subgroup 19A; longan; lychee; pulasan; rambutan; spanish lime; and turnip, greens. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This regulation also deletes brassica, leafy, group at 0.01 parts per million (ppm), which is replaced with brassica, leafy greens, subgroup 5B at 10 ppm, and brassica, head and stem, subgroup 5A at 2.0 ppm.

DATES: This regulation is effective July 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0135, must be received on or before September 2, 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 VI. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an are agricultural producer, food manufacturer, and 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. 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–2003–0135. 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 and Statutory Findings

In the **Federal Register** of April 2, 2003 (68 FR 16046) (FRL–7299–6), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of pesticide petitions (PP 2E6448, 2E6462, 2E6486, and 3E6526) by IR-4, 681 US Highway #1 South, New Brunswick, NJ 08902–3390. That notice included a summary of the petitions prepared by Syngenta Crop Protection, Inc., the registrant.

The petitions requested that 40 CFR 180.516 be amended by establishing tolerances for residues of the fungicide fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile), in or on the following commodities: Brassica, head and stem, subgroup 5A at 1.5 ppm; brassica, leafy greens, subgroup 5B at 9.0 ppm; carrot at 0.5 ppm; herb subgroup 19A at 33 ppm; longan, lychee, pulasan, rambutan, and spanish lime at 2.0 ppm; and turnip, greens at 9.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for tolerances for residues of fludioxonil on Brassica, head and stem, subgroup 5A at 2.0 ppm; brassica, leafy greens, subgroup 5B at 10 ppm; carrot at 0.75 ppm; herb, fresh, subgroup 19A at 10 ppm; herb, dried, subgroup 19A at

65 ppm; longan, lychee, pulasan, rambutan, and spanish lime at 1.0 ppm; and turnip, greens at 10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fludioxonil are discussed in Unit III.A. of the final rule on fludioxonil, which published in the **Federal Register** of December 29, 2000 (65 FR 82927) (FRL–6760–9), and August 2, 2002 (67 FR 50354) (FRL–7188–7).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for fludioxonil used for human risk assessment is Unit III.B.of the final rule on fludioxonil, which published in the **Federal Register** of December 29, 2000 (65 FR 82927) and August 2, 2002 (67 FR 50354).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.516) for the residues of fludioxonil, in or on a variety of raw agricultural commodities. Fludioxonil is registered for foliar application (grape, strawberry, green onion, dry bulb onion, bushberry, caneberry, juneberry, longonberry, pistachio, salal, and watercress), post-harvest application (stone fruit), and for seed treatment purposes (numerous crops) with tolerances for residues of fludioxonil ranging from 0.01-7.0 ppm (40 CFR 180.516(a)). A section 18 registration is also established for post-harvest application to pomegranate with a tolerance for residues of fludioxonil of 5.0 ppm (40 CFR 180.516(b)). Currently there are no tolerances established for residues of fludioxonil in/on livestock. Risk assessments were conducted by EPA to assess dietary exposures from fludioxonil in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996, 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The acute analysis assumed tolerance level residues, 100% crop treatment (CT), and DEEM (ver. 7.76) default processing factors for all registered/proposed commodities (tier 1).

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996, 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analysis assumed tolerance level residues, 100% CT, and DEEM (ver. 7.76) default processing factors for all registered/proposed commodities (tier 1).

iii. *Cancer.* EPA's Cancer Peer Review Committee (CPRC) classified fludioxonil as a Group D - not classifiable as to human carcinogenicity.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fludioxonil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fludioxonil.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentration in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. FIRST and PRZM/EXAMS incorporate an index reservoir environment, and a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw

water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fludioxonil they are further discussed in the aggregate risk sections E.

There are no ground or surface water monitoring data available for fludioxonil. Tier I models, FIRST and SCI-GROW, were used to derive the surface water and ground water EECs, respectively. According to the proposed label information, the maximum application rate for fludioxonil is 4 lbs active ingredient (ai)/Acre/year on turf (maximum single application rate of 0.675 lbs ai/Acre). Application to turf provided the high exposure scenario; therefore, the drinking water EECs were derived from the use on turf.

Ground water. SCI-GROW provides a ground water screening exposure value for use in determining the potential risk to human health from drinking ground water contaminated with pesticides. The ground water modeling generated a ground water EEC of 0.11 parts per billion (ppb) for fludioxonil.

Surface water. The predicted index reservoir concentrations for total residues using FIRST for the proposed use of fludioxonil generated acute and chronic surface water EECs of 132 ppb and 49 ppb, respectively.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fludioxonil is currently registered for use on the following residential non-dietary sites: Based on the registered labels, fludioxonil can be used as a protectant fungicide for control of certain diseases of turfgrass and certain foliar, stem and root diseases in ornamentals in residential and commercial landscapes. The risk assessment was conducted using the following residential exposure assumptions: Short- and intermediate-term dermal exposures (adults and toddlers), and short- and intermediate-term incidental ingestion exposures (toddlers).

Fludioxonil is registered for uses on residential lawns and ornamentals; however, it is restricted to professional applicators only. As such, no residential handler (i.e., applicator) exposures are anticipated.

EPA did not select short- or intermediate-term dermal endpoints; subsequently, no residential post-application dermal assessment is included. Additionally, due to the low vapor pressure of fludioxonil, no significant post-application inhalation exposure is anticipated. As a result, there are no significant post-application exposures anticipated from treated landscape ornamentals. Therefore, the residential component of this assessment only includes a post-application assessment for toddler incidental ingestion exposures related to residential lawn applications.

4. *Cumulative exposure to substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fludioxonil and any other substances and fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. The developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.

3. *Conclusion*. There is a complete toxicity data base for fludioxonil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X SF to protect infants and children should be reduced to 1X because:

- The toxicology data base is complete.
- The developmental and reproductive toxicity data did not indicate increased quantitative or qualitative susceptibility of rats or rabbits to *in utero* and/or postnatal exposure.
- A developmental neurotoxicity study is not required because there was no evidence of neurotoxicity in the current toxicity data base.
- The exposure assessment approach will not underestimate the potential dietary (food and water) and non-dietary exposures for infants and children resulting from the use of fludioxonil.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure

to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure milligram/kilogram (mg/kg/day) = cPAD - (average food + residential exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fludioxonil will occupy 1% of the aPAD for females 13-49 years old. Fludioxonil is not expected to pose an acute dietary risk for the general population (including children and infants). In addition, there is potential for acute dietary exposure to fludioxonil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD for females 13–49 years old, as shown in Table 1 of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUDIOXONIL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13-49 years old)	1.0	1	132	0.11	30,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fludioxonil from food will utilize 11% of the cPAD for the U.S. population, 30% of the cPAD for all infants (<1 year old) and 38% of the cPAD for children 1–2 years old. Based on the use pattern, chronic residential exposure to residues of fludioxonil is not expected. In addition, there is potential for chronic dietary exposure to fludioxonil in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUDIOXONIL

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.3	11	49	0.11	940
All infants (<1 year old)	0.3	30	49	0.11	210
Children (1-2 years old)	0.3	38	49	0.11	190
Females (13-49 years old)	0.3	8	49	0.11	830

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fludioxonil is currently registered for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for fludioxonil.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 460 for all infants < 1 year old; 410 for children 1–2 years old; 490 for children 3–5 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of fludioxonil in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO FLUDIOXONIL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
All infants (< 1 year old)	460	100	49	0.11	780
Children (1-2 years old)	410	100	49	0.11	760
Children (3-5 years old)	490	100	49	0.11	800

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fludioxonil is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for fludioxonil.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 200 for all infants <1 year old; 180 for children 1–2 years old; and 220 for children 3–5 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of fludioxonil in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO FLUDIOXONIL

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
All infants (< 1 year old)	200	100	49	0.11	130
Children (1-2 years old)	180	100	49	0.11	140
Children (3-5 years old)	220	100	49	0.11	180

5. *Aggregate cancer risk for U.S. population.* EPA's Cancer Peer Review Committee (CPRC) classified fludioxonil as a Group D - not classifiable as to human carcinogenicity.

6. *Determination of safety.* Based on these risk assessments, 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 fludioxonil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The methods used in the field trial studies were similar to a method validated by the Analytical Chemistry Branch. Since adequate method validation and concurrent recoveries were attained in the field trial studies, EPA concludes that the ACB validated method is appropriate for enforcement of the tolerances associated with this petition. No further validation is necessary.

Adequate enforcement methodology (high pressure liquid chromatography method AG–597B) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Canada, Codex, and Mexico do not have maximum residue limits (MRLs) for residues of fludioxonil in/on the subject crops. Therefore, harmonization is not an issue.

V. Conclusion

Therefore, the tolerances are established for residues of fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile) in or on brassica, head and stem, subgroup 5A at 2.0 ppm; brassica, leafy greens, subgroup 5B at 10 ppm; carrot at 0.75 ppm; herb, fresh, subgroup 19A at 10 ppm; herb, dried, subgroup 19A at 65 ppm; longan, lychee, pulasan, rambutan, and spanish lime at 1.0 ppm; and turnip, greens at 10 ppm.

VI. 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–2003–0135 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 September 2, 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 VI.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–2003–0135, 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).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions 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 under 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 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). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. 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.

VIII. 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: June 25, 2003.

Debra Edwards,

Director, Registration Division, 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.

■ 2. Section 180.516 is amended by removing the entry for ''Vegetable, brassica, leafy, group'' and by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) * * *

Commodity	Parts per million
Brassica, head and stem, subgroup 5A	2.0
Brassica, leafy greens, subgroup 5B	10
* * * * *	
Carrot	0.75
* * * * *	
Herb, dried, subgroup 19A	65
Herb, fresh, subgroup 19A	10
* * * * *	
Longan	1.0
Lychee	1.0
* * * * *	
Pulasan	1.0
* * * * *	
Rambutan	1.0
* * * * *	
Spanish lime	1.0
* * * * *	
Turnip, greens	10
* * * * *	

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[FR Doc. 03–16931 Filed 7–2–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 10

RIN 1024–AC84

Native American Graves Protection and Repatriation Act Regulations—Civil Penalties; Correction

AGENCY: Department of the Interior.

ACTION: Final rules correction.

SUMMARY: This document corrects the final rule that was published on Thursday, April 3, 2003. This final rule outlines procedures for assessing civil penalties on museums that fail to comply with applicable provisions of the Native American Graves Protection and Repatriation Act of 1990 (''the Act'' or ''NAGPRA'').

EFFECTIVE DATE: May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. John Robbins, Assistant Director, Cultural Resources, National Park

Service, 1849 C Street NW., (2253), Washington, DC 20240, telephone (202) 354–2269.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, President George Bush signed the Act into law. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to Native American human remains, funerary objects, sacred objects, and cultural patrimony with which they are affiliated. Section 9 of the Act authorizes the Secretary of the Interior (''the Secretary'') to assess a civil penalty against any museum that fails to comply with the requirements of the Act [25 U.S.C. 3007]. Such penalties must be assessed according to procedures established by the Secretary through regulation. An interim rule establishing civil penalty procedures was published in the **Federal Register** on January 13, 1997 (62 FR 1820), and went into effect on February 12, 1997. A final rule establishing civil penalty procedures was published in the **Federal Register** on April 3, 2003 (68 FR 16354), and went into effect on May 5, 2003. As published, the final rule contains an error that needs to be corrected.

Need for Correction: The correction clarifies the amendatory instruction to make it clear that the final rule published in the **Federal Register** on April 3, 2003 (68 FR 16354) replaces the interim rule published in the **Federal Register** on January 13, 1997 (62 FR 1820).

List of Subjects in 43 CFR Part 10

Administrative practices and procedure, Hawaiian Natives, Historic preservation, Indians—Claims, Museums, Reporting and record-keeping requirements.

■ Accordingly, the final rule amending title 43 CFR part 10 published April 3, 2003 (68 FR 16354) is corrected as follows:

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS

The authority citation for Part 10 continues to read as follows:

Authority: 25 U.S.C. 3001 *et seq.*

In FR Doc. 03–7947 published on April 3, 2003, (68 FR 16354), make the following technical correction: On page 16360, in the second column, the amendatory instruction below the authority citation indicates that Part 10 is amended by ''adding'' § 10.12. The sentence is amended to read ''Part 10 is amended by revising § 10.12 as follows:''.

Dated: June 16, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–16802 Filed 7–2–03; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE TREASURY

48 CFR Chapter 10

RIN 1505–AA89

Department of the Treasury Acquisition Regulation

AGENCY: Office of the Procurement Executive, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Treasury'') is amending the Department of the Treasury Acquisition Regulation (DTAR) in its entirety. Treasury has rewritten the DTAR into plain English. The DTAR includes both policy direction and regulatory guidance. Only regulatory guidance is being published. Treasury has also updated the DTAR to reflect changes to the Federal Acquisition Regulation (FAR) and to establish and encourage participation in the Treasury Mentor-Protégé Program.

DATE: August 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin Whitfield, Department of the Treasury, Office of the Procurement Executive, 1500 Pennsylvania Ave., NW., c/o 1310 G St., NW., Suite 400W, Washington, DC 20220. (202) 622–0248.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Action
III. Statutory and Executive Order Reviews
A. Executive Order 12866
B. Executive Order 12988
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. National Environmental Policy Act
F. Executive Order 13132
G. Unfunded Mandates Reform Act of 1995
H. Treasury and General Government Appropriation Act, 1999

I. Background

This final rule amends the Department of the Treasury Acquisition Regulation (DTAR). The DTAR, as reissued, uses plain English to improve clarity and understanding; eliminates internal operating procedures that do not have a significant effect beyond Treasury; establishes the Treasury Mentor-Protégé Program and, eliminates coverage that is obsolete or duplicates the FAR. The DTAR is intended to be simple for contractors, offerors, and Treasury contracting personnel to use.

A proposed rule was published in the **Federal Register** (67 FR 76150–67156) on December 11, 2002, providing for a 30 day comment period. There were no comments received regarding the proposed rule.

II. Final Action

This final rule will amend the Department of the Treasury Acquisition Regulation system. It uses plain English, eliminates internal operating procedures that do not have significant effect beyond Treasury, establishes the Treasury Mentor-Protégé Program, and eliminates coverage that is obsolete or duplicates the FAR.

III. Statutory and Executive Order Reviews

A. Executive Order 12866

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 as supplemented by Executive Order 13132, and is not a major rule under 5 U.S.C. 804; therefore no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

B. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, Treasury has completed the required review and determined that this final rule meets the relevant standards of Executive Order 12988 as supplemented by Executive Order 13132.

C. Regulatory Flexibility Act

This final regulation does not 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, and *et seq.* The analysis requirement of the Act does not apply if the agency certifies that the rule, if promulgated, will not have a significant impact on a substantial number of small entities. The Mentor-Protégé Program does apply to large business and small business firms that receive a form of incentive for assuming the role of mentor to small businesses, other small disadvantaged businesses, qualified HUBZone small businesses, small businesses owned and controlled by service disabled veterans, and small women-owned businesses. It is expected that the proteégeé entities would directly benefit from the forms of mentoring provided for in this rule.

The other revisions do not add any new requirements, but restate existing

requirements in plain English and provide consistency with the FAR.

D. Paperwork Reduction Act

This reissued DTAR contains information collection requirements subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) that were approved previously by OMB and assigned the contract numbers shown in DTAR Section 1001.106.

E. National Environmental Policy Act

This final rule does not individually or cumulatively have a significant impact on the human environment, as determined by Treasury's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, no environmental impact statement or environmental assessment is required pursuant to NEPA.

F. Executive Order 13132

Executive Order 13132 requires when formulating and implementing regulations, legislation, and any other policy actions that have federalism implications, that agencies must follow prescribed principles and criteria. Treasury has determined that this final rule does not contain federalism implications and would not preempt State laws.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to State, local or tribal governments, or to the private sector of $100 million or more. This final rule would only affect private sector entities and the impact is less than $100 million.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriation, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This final rule does not have any impact on the autonomy or integrity of the family as an institution. Accordingly, Treasury concluded that it is not necessary to prepare a Family Policymaking Assessment.

List of Subjects in 48 CFR Chapter 10

Government acquisition.

Corey M. Rindner,

Director, Office of the Procurement Executive.

■ Accordingly, the Department of the Treasury revises 48 CFR Chapter 10, to read as follows:

CHAPTER 10—DEPARTMENT OF THE TREASURY

Subchapter A—General

Part
1001 Department of the Treasury Acquisition Regulation (DTAR) System
1002 Definitions of Words and Terms
1003 Improper Business Practices and Personal Conflicts of Interest
1004 Administrative Matters

Subchapter B—Competition and Acquisition Planning

1005 Publicizing Contract Actions
1011 Describing Agency Needs

Subchapter D—Socioeconomic Programs

1019 Small Business Programs

Subchapter E—General Contracting Requirements

1028 Bonds and Insurance
1033 Protests, Disputes, and Appeals

Subchapter H—Clauses and Forms

1052 Solicitation Provisions and Contract Clauses

Subchapter A—General

PART 1001—DEPARTMENT OF THE TREASURY ACQUISITION REGULATORY (DTAR) SYSTEM

Subpart 1001.1—Purpose, Authority, Issuance

Sec.
1001.101 Purpose.
1001.104 Applicability.
1001.105 Issuance.
1001.105–1 Publication and code arrangement.
1001.105–2 Arrangement of regulations.
1001.105–3 Copies.
1001.106 OMB Approval under the Paperwork Reduction Act.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1001.1—Purpose, Authority, Issuance

1001.101 Purpose.

This subpart establishes Chapter 10, the Department of the Treasury Acquisition Regulation (DTAR), within Title 48 of the Federal Acquisition Regulation (FAR) System. The DTAR contains policies and procedures that supplement FAR coverage and directly affect the contractual relationship between the Department of the Treasury and its business partners (e.g., prospective offerors/bidders and contractors). When FAR coverage is adequate, there will be no corresponding DTAR coverage.

1001.104 Applicability

The FAR and DTAR apply to all acquisitions of supplies and services, which obligate appropriated funds. For acquisitions made from non-appropriated funds, the Senior Procurement Executive will determine the rules and procedures that will apply. The DTAR does not apply to the acquisitions of the U.S. Mint.

1001.105 Issuance.

1001.105–1 Publication and code arrangement.

The DTAR and its subsequent changes will be published in the **Federal Register** and codified in the Code of Federal Regulations (CFR). The DTAR will be issued as 48 CFR Chapter 10.

1001.105–2 Arrangement of regulations.

(a) *References and citations.* The DTAR is divided into the same parts, subparts, sections, subsections, and paragraphs as the FAR except that 10 or 100 will precede the DTAR citation so that there are four numbers to the left of the first decimal. Reference to DTAR material must be made in a manner similar to that prescribed by FAR 1.105–2(c).

1001.105–3 Copies.

Copies of the DTAR in **Federal Register** or CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402.

1001.106 OMB Approval under the Paperwork Reduction Act.

OMB has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification and order: OMB Control No. 1505–0081 (Offeror submissions), OMB Control No. 1505–0080 (Contractor submissions), and OMB Control No. 1505–0107 (Protests). OMB regulations and OMB's approval and assignment of control numbers are conditioned upon Treasury bureaus not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

PART 1002—DEFINITIONS OF WORDS AND TERMS

Subpart 1002.1—Definitions.

Sec.
1002.101 Definitions.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1002.1—Definitions.

1002.101 Definitions.

Bureau Chief Procurement Officer (BCPO) means the senior acquisition person at each bureau's headquarters. Within the Internal Revenue Service, this may be the Director, Procurement or the Deputy Director, Procurement.

Legal counsel means the Treasury or bureau office providing legal services to the contracting activity.

Senior Procurement Executive (SPE) for the Department of the Treasury is the Director, Office of the Procurement Executive.

PART 1003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1003.9—Whistleblower Protections for Contractor Employees

1003.901 Definitions.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1003.9—Whistleblower Protections for Contractor Employees

1003.901 Definitions.

Authorized official of an agency means Treasury's SPE.

PART 1004—ADMINISTRATIVE MATTERS

Subpart 1004.4—Safeguarding Classified Information Within Industry

Sec.
1004.470 Investigative Requirement for Contractors.
1004.470—1 General.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1004.4—Safeguarding Classified Information Within Industry

1004.470 Investigative Requirements for Contractors.

1004.470—1 General.

Contract employees not requiring access to classified information must meet the investigative requirements of Chapter II, Section 2 of TD P 71–10, Department of the Treasury—Security Manual.

Subchapter B—Competition and Acquisition Planning

PART 1005—PUBLICIZING CONTRACT ACTIONS

Subpart 1005.2—Synopses of Proposed Contract Actions

Sec.
1005.202 Definitions.

Authority: 41 U.S.C. 418(b) (a) and (b).

Subpart 1005.2—Synopses of Proposed Contract Actions

105.202 Exceptions.

(b)(1) The Office of Federal Procurement Policy and the Small Business Administration have extended the Pilot Program on Acquisition of Services from Small Businesses. It allows for a waiver of the synopsis requirement for services from competitive small businesses between $25,000 and $100,000. Contracting officers may waive the synopsis requirement after determining the following:

(1) Acquisitions covered by the waiver are for services (excluding those exempted from set-asides under the Small Business Competitiveness Demonstration Program) in amounts over $25,000, but not exceeding the simplified acquisition threshold ($100,000), of which supply items are expected to constitute less than 20 percent of the value of the contract;

(ii) The covered acquisitions will be set-aside for small businesses;

(iii) Quotes or offers for covered acquisitions will be solicited and obtained from a minimum of five small business concerns;

(iv) The Procurement Marketing and Access Network (PRO-Net) will be used to identify and solicit bids from a minimum of five small businesses; and

(v) If practicable, two sources not included in the previous solicitation for the same services will be solicited.

PART 1011—DESCRIBING AGENCY NEEDS

Subpart 1011.1—Selecting and Developing Requirements Documents

Sec.
1011.103 Market acceptance.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1011.1—Selecting and Developing Requirements Documents

1011.103 Market Acceptance.

(a) BCPOs can act on behalf of the head of the agency in this subpart only. BCPOs, under appropriate circumstances, require offerors to make the required demonstrations.

Subchapter D—Socioeconomic Programs

PART 1019—SMALL BUSINESS PROGRAMS

Subpart 1019.2—Policies

Sec.
1019.202 Specific policies.
1019.202—70 The Treasury Mentor-Protégé Program
1019.202—70–3 Non-affiliation.
1019.202—70–4 General policy.
1019.202—70–5 Incentives for prime contractor participation.
1019.202—70–7 Mentor firms.
1019.202—70–8 Protégé firms.
1019.202—70–9 Selection of Protégé firms.
1019.202—70–10 Application process for mentor firms to participate in the program.
1019.202—70–11 OSBD review and approval process of agreement.
1019.202—70–12 Agreement contents.
1019.202—70–13 Developmental assistance.
1019.202—70–14 Obligation.
1019.202—70–16 Solicitation provisions and contract clauses.

Subpart 1019.7—The Small Business Subcontracting Program

1019.708 Contract clauses.
1019.708–70 Solicitation provisions and contract clauses.

Subpart 1019.8—Contracting With the Small Business Adminstration (The 8(a) Program)

1019.811 Preparing the contracts.
1019.811–3 Contract clauses.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1019.2—Policies

1019.202 Specific policies.

1019.202–70 The Treasury Mentor-Protégé Program.

1019.202 Non-affiliation.

For purposes of the Small Business Act, a protégé firm may not be considered an affiliate of a mentor firm solely on the basis that the protégé firm is receiving developmental assistance referred to in DTAR 1019.202–70–13 from such mentor firm under the Program.

1019.202–70–4 General policy.

(a) Eligible prime contractors, not included on the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'', that are approved as mentors will enter into agreements with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors or subcontractors.

(b) A firm's status as a protégé under a Treasury contract must not have an effect on the firm's eligibility to seek other contracts or subcontracts.

1019.202–70–5 Incentives for prime contractor participation.

(a) Under the Small Business Act, 15 U.S.C. 637(d)(4)(E), Treasury is authorized to provide appropriate incentives to encourage subcontracting opportunities consistent with the efficient and economical performance of the contract. Proposed mentor-protégé efforts will be considered during the evaluation of such negotiated, competitive offers. Contracting officers must provide, as an incentive, a bonus score, not to exceed 5% of the relative importance assigned to the technical/management factors.

(b) A mentor's performance will be evaluated against the criteria described in DTAR 1052.219–75.

(c) Before awarding a contract that requires a subcontracting plan, the existence of a mentor-protégé arrangement, and performance (if any) under an existing arrangement, must be considered by the contracting officer in:

(1) Evaluating the quality of a proposed subcontracting plan under FAR 19.705–4; and

(2) Evaluating the contractor compliance with the subcontracting plans submitted in previous contracts as a factor in determining contractor responsibility under FAR 19.705–5(a)(1).

(d) Mentor-protégé arrangements may provide the government with greater assurance that a protégé subcontractor will be able to perform under the contract.

(e) The Office of Small Business Development (OSBD) Mentoring Award is a non-monetary award that will be presented (annually or as often a appropriate) to the mentoring firm providing the most effective developmental support of a protégé. The Mentor-Protégé Program Manager will recommend an award winner to the Director, Office of Small Business Development.

1019.219–70–7 Mentor firms.

A mentor firm may be either a large or small business, eligible for award of a Government contract that can provide developmental assistance to enhance the capabilities of protégés to perform as subcontractors. Mentors will be encouraged to enter into arrangements with protégés in addition to firms with whom they have established business relationships.

1019.202–70–8 Protégé firms.

(a) For selection as a protégé, a firm must be:

(1) A small business, women-owned small business, small disadvantaged business, small business owned and controlled by service disabled veterans, or qualified HUBZone small business:

(2) ''Small'' in the NAICS for the services or supplies to be provided by the protégé under its subcontract to the mentor; and

(3) Eligible for receipt of Government contracts.

(b) Except for small disadvantaged business, or qualified HUBZone small business firms, a protégé firm may self-certify to a mentor firm that it meets the requirements set forth if paragraph (a) of this section. Mentors may rely in good faith on written representations by potential protégé that they meet the specified eligibility requirements. The small disadvantaged business and HUBZone status eligibility and documentation requirements are determined according to FAR 19.304 and FAR 19.1303, respectively.

(c) Protégés may not have multiple mentors unless approved, in writing, by the Director, Office of Small Business Development (OSBD). Protégés participating in other agency mentor-protégé programs in addition to the Treasury Program should maintain a system for preparing separate reports of mentoring activity for each agency's program.

1019.708–70–9 Selection of protégé firms.

(a) Mentor firms will be solely responsible for selecting protégé firms. The mentor is encouraged to identify and select the types of protégé firms listed in 1019.202–70–7. Mentor firms may have multiple protégés.

(b) The selection of protégé firms by mentor firms may not be protested. Any protest regarding the size or eligibility status of an entity selected by a mentor to be a protégé must be referred solely to Treasury's OSBD for resolution. Treasury, at its discretion, may seek an advisory opinion from the Small Business Administration (SBA).

1019.202–70–10 Application process for mentor firms to participate in the program.

(a) Firm interested in becoming a mentor firm may apply in writing to Treasury's OSBD. The application will be evaluated based upon the description of the nature and extent of technical and managerial support proposed as well as the extent of other developmental assistance in the form of equity investment, loans, joint-venture support, and traditional subcontracting support.

(b) A proposed mentor will submit the information listed in DTAR 1019.202–70–12 for inclusion in a mentor-protégé agreement.

1019.202–70–11 OSBD review and approval process of agreement.

(a) OSBD will review the information specified in DTAR 1019.202–70–12. The OSBD review will be completed no later than 30 calendar days after receipt.

(b) Upon completion of the review, the mentor may implement the developmental assistance program.

(c) An approved agreement will be incorporated into the mentor firm's contract(s) with Treasury.

(d) If the OSBD disapprove the agreement, the mentor may provide additional information for reconsideration. Upon finding deficiencies that the OSBD considers correctable, the OSBD will notify the mentor and provide a list of defects. Any additional information or corrections requested will be provided within 30 calendar days. The review of any supplemental material will be completed within 30 days after receipt by the OSBD. When submission of additional data is required during a proposal evaluation for a new contract award, shorter timeframes for submission, review and re-evaluation for approval may be authorized by the OSBD.

(e) The agreement defines the relationship between the mentor and protégé firms only. The agreement itself does not create any privity of contract between the mentor or protégé and Treasury.

1019.202–70–12 Agreement contents.

The contents of the agreement will contain:

(a) Names and addresses of mentor and protégé firms and a point of contact within both firms who will oversee the agreement;

(b) Procedures for the mentor firm to notify the protégé firm, OSBD and the contracting officer, in writing, at least 30 days in advance of the mentor firm's intent to voluntarily withdraw from the program;

(c) Procedures for a protégé firm to notify the mentor firm in writing at least 30 days in advance of the protégé firm's intent to voluntarily terminate the mentor-protégé agreement. The mentor must notify the OSBD and the contracting officer immediately upon receipt of such notice from the protégé;

(d) Each proposed mentor-protégé relationship must include information on the mentor's ability to provide developmental assistance to the protégé and how that assistance will potentially increase contracting and subcontracting opportunities for the protégé firm;

(e) A description of the type of developmental Program that will be provided by the mentor firm to the

protégé firm, to include a description of the potential subcontract work, and a schedule for providing assistance and criteria for evaluation of the protégés developmental success;

(f) A listing of the types and dollar amounts of subcontracts that may be awarded to the protégé form;

(g) Program participation term;

(h) Termination procedures;

(i) Plan for accomplishing work should the agreement be terminated; and,

(j) Other terms and conditions, as appropriate.

1019.202–70–13 Developmental assistance.

The forms of developmental assistance a mentor can provide to a protégé include:

(a) Management guidance relating to financial management, organizational management, overall business management/planning, business development, and technical assistance;

(b) Loans;

(c) Rent-free use of facilities and/or equipment;

(d) Property;

(e) Temporary assignment of personnel to protégé for purpose of training; and,

(f) Any other types of mutually beneficial assistance.

1019.202–70–14 Obligation.

(a) Mentor or protégé firms, may voluntarily withdraw from the Mentor-Protégé Program. However, such withdrawal will not impact the program mission and contract requirements under the prime contract.

(b) At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé must formally brief the Department of the Treasury team regarding program accomplishments as pertains to the approved agreement. Individual briefings may be conducted, at the request of either party. Treasury will evaluate these reports by considering the following:

(1) Specific actions taken by the mentor, during the evaluation period, to increase the participation of protégé as suppliers to the Federal government and to commercial entities;

(2) Specific actions taken by the mentor, during the evaluation period, to develop the technical and corporate administrative expertise of a protégé as defined in the agreement;

(3) To what extent the protégé has met the developmental objectives in the agreement; and,

(4) To what extent the mentor firm's participation in the Mentor-Protégé Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms and agencies other than the Department of the Treasury.

(c) Mentor and protégé firms must submit an evaluation to the OSBD at the conclusion of the mutually agreed upon program period, the conclusion of the contract, or the voluntary withdrawal by either party from the Mentor-Protégé Program, whichever comes first.

1019.202–70–16 Solicitation provisions and contract clauses.

(a) Insert the provision at DTAR 1052.219–73, Department of the Treasury Mentor-Protégé Program, in all unrestricted solicitations exceeding $500,000 ($1,000,000 for construction) that offer subcontracting possibilities.

(b) Insert the clause at DTAR 1052.219–75, Mentor Requirements and Evaluation, in contracts where the prime contractor is participant in the Treasury Mentor-Protégé Program.

Subpart 1019–7—The Small Business Subcontracting Program

1019.708 Contract clauses.

1019.708–70 Solicitation provisions and contract clauses.

(a) Insert the clause at DTAR 1052.219–70, SF 294 and SF 295 Reporting, in all solicitations and contracts requiring a subcontracting plan.

(b) Insert the provision at DTAR 1052.219–71, Subcontracting Plan, in all solicitations requiring a subcontracting plan.

Subpart 1019.8—Contracting With the Small Business Administration (The 8(a) Program)

1019.811 Preparing the contracts.

1019.811–3 Contract clauses.

(d)(3) Insert theclause at DTAR 1052.219–18, Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation), for paragraph (c) of FAR 52.219–18, Notification of Completion Limited to Eligible 8(a) Concerns, in all solicitations and contracts that exceed $100,000 and are processed under DTAR 1019.8.

(f) Insert the clause at DTAR 1052.219–72, Section 8(a) Direct Award, in solicitations and contracts that exceed $100,000 and are processed under DTAR 1019.8 for paragraph (c) of FAR 52.219–11, Special 8(a) Subcontract Conditions; FAR 52.219–12, Special 8(a) Subcontract Conditions; and FAR 52.219–17, Section 8(a) Award.

Subchapter E—General Contracting Requirements

PART 1028—BONDS AND INSURANCE

Subpart 1028.1—Bonds

Sec.
1028.106 Administration.
1028.106–6 Furnishing information.

Subpart 1028.3—Insurance

1028.307– Insurance under cost-reimbursement contracts.
1028.307–1 Group insurance plans.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1028.1—Bonds

1028.106 Administration.

1028.106–6 Furnishing information.

(b) COs must furnish certified copies and determine reasonable and appropriate costs, after consultation with legal counsel.

Subpart 1028.3—Insurance

1028.307 Insurance under cost-reimbursement contracts.

1028.307–1 Group insurance plans.

Plans must be submitted to the CO, who must obtain the advice of legal counsel.

PART 1033—PROTESTS, DISPUTES, AND APPEALS

Subpart 1033.2—Disputes and Appeals

Sec.
1033.201 Definitions.
1033.210 Contracting officer's authority.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1033.2—Disputes and Appeals

1033.201 Definitions.

Agency Board of Contract Appeals means the General Services Administration Board of Contract Appeals (GSBCA). The GSBCA is the authorized representative of the Secretary of the Treasury in hearing, considering, and determining all appeals of decisions of CO's filed by contractors pursuant to FAR subpart 33.2. Appeals must be governed by the Rules of the GSBCA (48 CFR chapter 61, part 6101).

1033.210 Contracting officer's authority.

It is Treasury's policy to encourage the use of Alternate Disputes Resolution (ADR) procedures. A decision to use ADR procedures requires review and approval by legal counsel.

Subchapter H—Clauses and Forms

PART 1052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1052.2—Texts of Provisions and Clauses

Sec.
1052.210–70 Contracting Officer's Technical Representative (COTR) Designation and Authority.
1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).
1052.219–70 SF 294 and SF 295 Reporting.
1052.219–71 Subcontracting Plan.
1052.219–72 Section 8(a) Direct Awards.
1052.219–73 Department of the Treasury Mentor-Protégé Program.
1052.219–74 [Reserved]
1053.219–75 Mentor Requirements and Evaluation.

Authority: 41 U.S.C. 418b (a) and (b).

Subpart 1052.2—Texts of Provisions and Clauses

1052.201–70 Contracting Officer's Technical Representative (COTR) Designation and Authority.

Per DTAR 1001.670–3, insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (COTR) DESIGNATION AND AUTHORITY (MAR 2002)

(a) The contracting officer's technical representative is _____ [insert name, address and telephone number].

(b) Performance of work under this contract is subject to the technical direction of the COTR identified above, or a representative designated in writing. The term ''technical direction'' includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.

(c) Technical direction must be within the scope of the contract specification(s)/work statement. The COTR does not have authority to issue technical direction that:

(1) Constitutes a change of assignment or additional work outside the contract specification(s)/work statement;

(2) Constitutes a change as defined in the clause entitled ''Changes'';

(3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;

(4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;

(5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or,

(6) Directs, supervises or otherwise controls the actions of the contractor's employees.

(d) Technical direction may be oral or in writing. The COTR must confirm oral direction in writing within five workdays, with a copy to the contracting officer.

(e) The contractor must proceed promptly with performance resulting from the technical direction issued by the COTR. In the opinion of the contractor, if any direction of the COTR or the designated representative falls within the limitations of (c) above, the contractor must immediately notify the contracting officer no later than the beginning of the next Government work day.

(f) Failure of the contractor and the contracting officer to agree that technical direction is within the scope of the contract will be subject to the terms of the clause entitled ''Disputes.''

(end of clause)

1052.219–18 Notification of Competition Limited to Eligible 8(a) Concerns—Alternate III (Deviation).

In accordance with DTAR 1019.811–3(d)(3), substitute the following for paragraph (c) in FAR 52.219–18:

(c) Any award resulting from this solicitation will be made directly by the contracting officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

1052.219–70 SF 294 and SF 295 Reporting.

Per DTAR 1019.708–70(a), insert the following clause:

SF 294 AND SF 295 REPORTING (MAR 2002)

In accordance with the clause entitled ''Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan'' in Section I and the contract schedule, SF 294 and SF 295 reports must be submitted to the following personnel:

Addressee	Submit SF 294	Submit SF 295
Contracting Officer (Address shown on front of contract)	Original	Original.
Small Business Specialist [Insert Bureau name and address]	Copy	Copy.
Department of the Treasury Office of Small Business Development (MMD) 1500 Pennsylvania Avenue, NW c/o 1310 G St., NW, Suite 400W Washington, DC 20220.	N/A	Copy.

(End of clause)

1052.219–71 Subcontracting Plan.

As prescribed in DTAR 1019.708–70(b), insert the following provision:

SUBCONTRACTING PLAN (MAR 2002)

As part of its initial proposal, each large business offeror must submit a contracting plan, as prescribed in FAR 52.219–9. Use of the subcontracting plan outlined containe in Section J of this solicitation is optional; however, plans must contain all elements included in the outline.

(End of provision)

1052.219–72 Section 8(a) Direct Awards.

As prescribed in DTAR 1019.811–3(f), insert the following clause:

SECTION 8(A) DIRECT AWARDS (MAR 2002)

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of the Treasury. SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by the contracting officer at the time of award]

(b) The contracting officer is responsible for administering the purchase order or contact and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The contracting officer shall also coordinate with SBA prior to processing any novation agreement. The contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the contracting officer, simultaneously with its notification to SBA (as required by SBA's 8(a) regulations), when the owner(s) upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)21), transfer of ownership or control must result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of control; and

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of clause)

1052.219–73 Department of the Treasury Mentor-Protégé Program.

As described in DTAR 1019.202–70, insert the following provision:

DEPARTMENT OF THE TREASURY MENTOR-PROTÉGÉ PROGRAM (JAN 2000)

(a) Large and small businesses are encouraged to participate in the Department of the Treasury Mentor-Protégé Program. Mentor firms provide small business protégé

with developmental assistance to enhance their capabilities and ability to obtain federal contracts.

Mentor firms are large prime contractors or eligible small businesses capable of providing developmental assistance. Protégé firms are small businesses as defined in 13 CFR parts 121, 124, and 126.

Developmental assistance is technical, managerial, financial, and other mutually beneficial assistance to aid protégés. Contractors interested in participating in the Program are encouraged to contact the Department of the Treasury OSBD or the Bureau of the OSBD for further information.

(End of provision)

1052.219–74 [Reserved]

1052.219–75 Mentor Requirements and Evaluation.

As prescribed in DTAR 1019.202–70, insert the following clause:

MENTOR REQUIREMENTS AND EVALUATION (JAN 2000)

(a) Mentor and protégé firms shall submit an evaluation to the Department of the Treasury's OSBD at the conclusion of the mutally agreed upon Program period, or the voluntary withdrawal by either party from the Program, whichever occurs first. At the conclusion of each year in the Mentor-Protégé Program, the prime contractor and protégé will formally brief the Department of the Treasury Mentor-Protégé Program Manager regarding program accomplishments under their mentor-protégé agreements.

(b) A mentor or protégé must notify the OSBD and the contracting officer, in writing, at least 30 calendar days in advance of the effective date of the firm's withdrawal from the Program. A mentor firm must notify the OSBD and the contracting officer upon receipt of a protégé's notice of withdrawal from the Program.

(End of Clause)

[FR Doc. 03–16918 Filed 7–2–03; 8:45 am]

BILLING CODE 4811–15–M

Proposed Rules

Federal Register
Vol. 68, No. 128
Thursday, July 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Docket No. DA–03–06]

National Dairy Promotion and Research Program; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites comments on a proposed amendment to the Dairy Promotion and Research Order (Order). The proposal would modify the composition of the National Dairy Promotion and Research Board (Dairy Board) by changing the number of member seats in four geographic regions. The proposed amendment was requested by the Dairy Board, which administers the Order, to better reflect the geographic distribution of milk production in the contiguous 48 States.

DATES: Comments must be submitted on or before July 17, 2003.

ADDRESSES: Comments should be filed with USDA/AMS/Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233. Comments may be faxed to (202) 720–0285 or e-mailed to *David.Jamison2@usda.gov.* Comments, which should reference the title of the action and the docket number, will be made available for public inspection at the above address during regular business hours. Comments also will be posted at: *http://www.ams.usda.gov/dairy/index.htm.*

FOR FURTHER INFORMATION CONTACT: David R. Jamison, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, (202) 720–6961, *David.Jamison2@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued pursuant to the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501, *et seq.*), Public Law 98–108, enacted November 29, 1983.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

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

The Dairy Production Stabilization Act of 1983 (Act) (7 U.S.C. 4501, *et seq.*) authorizes the National Dairy Promotion and Research Program. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 4509 of the Act, any person subject to the Dairy Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and requesting a modification of the Order or to be exempted from the Order. A person subject to an Order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) is required to examine the impact of this proposed rule on small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. For the purpose of the Regulatory Flexibility Act, small businesses in the dairy industry have been defined as those employing less than 500 employees. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000. There are approximately 70,000 dairy farms subject to the provisions of this Order. Most of the parties subject to the Order are considered small entities.

The proposed rule would amend the Dairy Promotion and Research Order by modifying the number of member seats on the National Dairy Promotion and Research Board in four of the 13 geographic regions. The proposed amendment is being made to better reflect the geographic distribution of milk produced within each of the 13 regions of the contiguous 48 States.

The Order currently is administered by a 36-member Dairy Board representing 13 geographic regions within the contiguous 48 States. The Order provides that the Dairy Board shall review the geographic distribution of milk production throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to better reflect the geographic distribution of milk production volume in the United States.

Based on a review of the 2002 geographic distribution of milk production, the Dairy Board has concluded that the number of Dairy Board members for four of the 13 geographical regions should be changed. The Dairy Board was last modified in 1998 based on 1997 milk production.

Accordingly, the proposed amendment should not have a significant economic impact on persons subject to the Order. The proposed changes merely would allow representation on the Dairy Board to better reflect geographic milk production in the contiguous 48 States.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35), the forms and reporting and recordkeeping requirements that are included in the Order have been approved previously by the Office of Management and Budget (OMB).

This proposed amendment to the Order will not add any burden to persons subject to the Order because they relate to provisions concerning membership of the Dairy Board. The proposed change would not impose

additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with the proposed rule.

Statement of Consideration

The proposed rule, if adopted, would amend the Dairy Promotion and Research Order by modifying the number of member seats on the National Dairy Promotion and Research Board in four of the 13 geographic regions. The proposed amendment reflects milk produced within each of the 13 geographic regions of the contiguous 48 States.

The Order currently is administered by a 36-member Dairy Board representing 13 geographic regions within the contiguous 48 States. The Order provides in § 1150.131 that the Dairy Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production in the United States. The Dairy Board is required to conduct the review at least every five years and not more than every three years.

The Order specifies the formula to be used to determine the number of Dairy Board seats in each of the 13 geographic regions designated in the Order. Under the formula, total milk production for the contiguous 48 States for the previous calender year is divided by 36 to determine a factor of pounds of milk represented by each Dairy Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region. Accordingly, the following table summarizes by region the volume of milk production distribution for 2002, the percentage of total milk production, the current number of Dairy Board seats per region, and the proposed number of Dairy Board seats for each region.

Region and States	Milk production (mil lbs)*	Percentage of total milk production	Current number of board seats	Proposed number of board seats
1: Oregon, Washington	7,713	4.5	1	2
2: California	34,884	20.6	6	7
3: Arizona, Colorado, Idaho, Montana, Nevada, Utah, Wyoming	16,291	9.6	3	3
4: Arkansas, Kansas, New Mexico, Oklahoma, Texas	15,313	9.0	3	3
5: Minnesota, North Dakota, South Dakota	10,447	6.2	3	2
6: Wisconsin	22,074	13.0	5	5
7: Illinois, Iowa, Missouri, Nebraska	8,971	5.3	2	2
8: Alabama, Kentucky, Louisiana, Mississippi, Tennessee	4,265	2.5	1	1
9: Indiana, Michigan, Ohio, West Virginia	13,264	7.8	3	3
10: Florida, Georgia, North Carolina, South Carolina, Virginia	7,194	4.2	2	1
11: Delaware, Maryland, New Jersey, Pennsylvania	12,492	7.4	3	3
12: New York	12,217	7.2	3	3
13: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	4,518	2.7	1	1
Total: 48 Contiguous States	169,643	100	36	36

*Based upon preliminary 2002 data that was released in Milk Production, Distrbution & Income, NASS,USDA, April 2003. This data will later be updated, revised, and finalized.

Upon the basis of its review of geographic milk production volume, the Dairy Board has proposed that the number of members in four of the 13 geographic regions be changed. The Dairy Board was last modified in 1998 based on 1997 milk production data. The current review conducted by the Dairy Board is based on 2002 data. In 2002, total milk production was 169,643 million pounds which indicates that each of the Dairy Board members would represent 4,712 million pounds of milk. For 1997, total milk production was 156,464 which indicated that each of the Board members would represent 4,346 milk pounds of milk.

Based on the 2002 milk production data, the Dairy Board proposes that member representation in Region 1 (Oregon and Washington) and Region 2 (California) each be increased by one member, and member representation in Region 5 (Minnesota, North Dakota, and South Dakota) and Region 10 (Florida, Georgia, North Carolina, South Carolina, and Virginia) each be decreased by one member. Milk production in Region 1 increased to 7,713 million pounds in 2002 up from 6,915 million pounds in 1997, indicating two Dairy Board members (7,713 divided by 4,712 = 2) compared to one Dairy Board member based on 1997 milk production data. Milk production in Region 2 increased in 2002 to 34,884 million pounds up from 27,628 million pounds in 1997, indicating seven Dairy Board members for the region (34,884 divided by 4,712 = 7) compared to 6 Dairy Board members based on the 1997. Also, in Region 5, milk production decreased to 10,447 million pounds in 2002 down from 11,307 million pounds in 1997, indicating two Dairy Board members (10,447 divided by 4,712 = 2) compared to three Board members based on 1997 milk production data. Additionally, milk production in Region 10 decreased to 7,194 million pounds in 2002 down from 7,523 million pounds in 1997, indicating one Dairy Board member for the region (7,194 divided by 4,712 = 1) compared to two members based on 1997 data.

Accordingly, it is proposed that member representation in Region 1 be increased from one member to two members, Region 2 representation be increased from six members to seven members, Region 5 representation be decreased from three members to two members, and Region 10 representation be decreased from two members to one member to reflect the geographic distribution of milk production within the contiguous 48 States.

A 14-day comment period is provided for interested persons to comment on this proposed rule. Twelve terms of existing Dairy Board members will expire on October 31, 2003. Thus, a 14-day comment period is provided to allow for a timely appointment of new Dairy Board members based on the current geographic distribution of milk production in the contiguous 48 States.

List of Subjects in 7 CFR Part 1150

Dairy Products, Milk, Promotion, Research.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4513.

2. In § 1150.131, paragraphs (a)(1), (a)(2), (a)(5), and (a)(10) are revised to read as follows:

§ 1150.131 Establishment and membership.

(a) * * *

(1) Two members from region number one comprised of the following States: Washington and Oregon.

(2) Seven members from region number two comprised of the following State: California.

* * * * *

(5) Two members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

* * * * *

(10) One member from region number ten comprised of the following States: Florida, Georgia, North Carolina, South Carolina and Virginia.

* * * * *

Dated: June 27, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–16827 Filed 7–2–03; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCY: National Credit Union Administration.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The NCUA Board is beginning a review of its regulations to reduce burden imposed on federally-insured credit unions, as required by section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. As required by section 2222, NCUA has categorized its regulations for the purpose of the review and proposes to publish categories of regulations for review between now and 2006.

The categories, and the regulations that NCUA considers to be part of those categories, are detailed below. This review presents a significant opportunity to consider the possibilities for burden reduction among groups of similar regulations. NCUA welcomes comment on the categories, the order of review and all other aspects of the project in order to maximize its effectiveness.

Today, NCUA is publishing its first in a series of public notices, comprising two of the categories—''Applications and Reporting,'' and ''Powers and Activities''—for public comment to identify outdated, unnecessary, or burdensome regulatory requirements imposed on federally-insured credit unions. Since NCUA will publish a series of requests for comment on the remaining categories, it is not recommended that burden reduction comments be submitted now for any regulations in other categories.

DATES: Comment must be received on or before October 1, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov. Please send comments by one method only.* Because of the number of regulatory matters for which NCUA may be receiving comments during the time this comment period is open, we suggest commenters identify comments in response to this notice by including ''EGRPRA'' in a subject or reference line in their comments.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Introduction

Congress enacted section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) (Pub. L. 104–208) as part of an effort to minimize unnecessary government regulation consistent with safety and soundness, consumer protection, and other public policy goals. Under section 2222 (12 U.S.C. 3311), NCUA and the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and Office of Thrift Supervision (Agencies) must review their regulations to reduce burden on insured depository institutions. We are required, jointly or individually, to categorize regulations by type, such as ''consumer regulations'' or ''safety and soundness'' regulations. Once we establish the categories, we must provide notice and ask for public comment on one or more of these regulatory categories. In drafting this notice, the NCUA participated as part of the EGRPRA planning process with the other Agencies. Because of the unique circumstances of federally-insured credit unions and their members, NCUA is issuing a separate notice from the Agencies. NCUA's notice is consistent and comparable with the Agency's notice, except on issues that are unique to credit unions. Section 2222 requires that NCUA ask the public to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome. NCUA must issue these publications for comment at regular intervals such that all of its regulations are published within a 10-year cycle. The first publication cycle will end in September 2006. The EGRPRA review supplements and complements the reviews of regulations that NCUA conducts under other laws and its internal policies.

Section 2222 requires a two-part regulatory response. First, NCUA must publish in the **Federal Register** a summary of the comments received, identifying the significant issues raised and discussing those issues. Second, NCUA must ''eliminate unnecessary regulations to the extent that such action is appropriate.'' NCUA and the Agencies may prepare the regulatory response individually or jointly.

Section 2222 further requires the FFIEC to submit a report to the Congress within 30 days after NCUA and the Agencies publish the comment summary and discussion in the **Federal Register**. This report must summarize any significant issues raised by the public comments and the relative merits of those issues. The report also must analyze whether the appropriate federal financial regulator involved is able to address the regulatory burdens associated with the issues by regulation, or whether the burdens must be addressed by legislation.

II. The EGRPRA Review's Special Focus

The regulatory review required by section 2222 provides a significant opportunity for the public and NCUA to step back and look at groups of related regulations and identify possibilities for streamlining. The EGRPRA review's overall focus on the ''forest'' of regulations will offer a new perspective in identifying opportunities to reduce

regulatory burden. Of course, reducing regulatory burden must be consistent ensuring the continued safety and soundness of federally-insured credit unions and appropriate consumer protections.

EGRPRA also recognizes that burden reduction must be consistent with NCUA's statutory mandates, many of which currently require certain regulations. One of the significant aspects of the EGRPRA review program is the recognition that effective burden reduction in certain areas may require legislative change. NCUA will be soliciting comment on, and reviewing the comments and regulations carefully for, the relationship among burden reduction, regulatory requirements and statutory mandates. This will be a key aspect of the report back to Congress.[1]

The combination of considering the relationship of regulatory and statutory change on regulatory burden with the section 2222 requirement for grouping regulations by type provides the possibility for particularly effective burden reduction. It may be possible to identify statutes and regulations that share similar goals or complementary methods of compliance monitoring such that the compliance requirements could be combined and overlapping requirements could be eliminated. For example, it may be possible to combine certain types of applications to eliminate duplication.

The EGRPRA review can also significantly contribute to the NCUA's on-going efforts to reduce regulatory burden. For example, since 1987, a formally adopted NCUA policy has required the Board to review each of its regulations at least once every three years with a view toward eliminating, simplifying, or otherwise easing the burden of each regulation.[2]

Further, NCUA addresses the issue of regulatory burden every time it proposes and adopts a rule. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and internal agency policies, NCUA examines each rulemaking to minimize the burdens it might impose on the industry and considers various alternatives.

NCUA will use both the EGRPRA review and its individual reviews to identify and reduce burdens on ''small'' institutions. More than half of federally-insured credit unions are small—having $10 million in assets or less—as defined by NCUA in IRPS 03–2. We are particularly concerned about burden on small institutions. When a new regulation is created or an old regulation is changed, small credit unions must devote a large percentage of their staffs' time to review the regulation to determine if and how it will affect them. Compliance with a regulation also can take large amounts of time that cannot be devoted to servicing members or business planning. In a large credit union, ensuring regulatory compliance can take many more hours; however, those hours make up a much smaller percentage of the credit union's resources. In situations where a regulation is aimed at an activity engaged in primarily by large credit unions, the compliance burden on small credit unions can outweigh its benefit.

III. NCUA's Proposed Plan

NCUA must categorize its regulations by ''type.'' Section 2222 gives it authority to determine categories, and suggests two possible categories: ''consumer regulations'' and ''safety and soundness.'' NCUA has regulations on more than 25 subjects covering a wide variety of areas from capital maintenance to the privacy of consumer financial information. A few of these regulations have been issued jointly with the other Agencies and are as uniform as possible. The majority of NCUA's regulations are issued independently by NCUA and apply only to federally-insured credit unions.

NCUA proposes to seek comments on 10 categories of its regulations which impose burden on federally-insured credit unions, including regulations that apply only to federal credit unions, between now and 2006.[3] The categories, in alphabetical order, are: Agency Programs; Applications and Reporting; Capital; Consumer Protection; Corporate Credit Unions; Directors, Officers and Employees; Money Laundering; Powers and Activities; Rules of Procedure and Safety and Soundness. NCUA believes that these categories are logical groupings that are not so broad such that the number of regulations presented in any one category would overwhelm potential commenters.

The categories also reflect recognized areas of industry interest and specialization or are particularly critical to the health of the credit union system. NCUA recognizes that its regulations could be categorized in other ways and welcomes recommendations about the categories and the regulations placed within them. The Board notes that some regulations, such as lending, pertain to more than one category and are included in all applicable categories.

Joint publication is not required by section 2222. NCUA believes that publishing its rules for public comment separately from the Agencies is the most effective method for achieving EGRPRA's burden reduction goals for federally-insured credit unions. The credit union system is quite different than the banking system. For example, credit unions deal with issues such as membership, credit union service organizations (CUSOs), and corporate credit unions, which are unique to credit union operations. The Agencies have listed four categories: Banking operations; community reinvestment; international operations; and securities, which have limited or no applicability in the credit union system. NCUA has included two categories, agency programs and corporate credit unions, which have no applicability in the banking system. Because of these obvious differences, NCUA is publishing its notices separately but maintaining comparability with the Agencies' notices to the extent the issues are the same. NCUA is publishing two categories of rules for burden reduction comment with this notice and plans to publish the remaining eight categories in roughly semiannual intervals, with 90-day comment periods for categories under review, through September 2006. NCUA welcomes recommendations on grouping the remaining categories and the order in which to publish them.

After the conclusion of the comment period for each EGRPRA review notice published in the **Federal Register**, NCUA will review the comments it has received and decide whether further action is appropriate with respect to the categories of regulations included in that notice. In the case of rules that NCUA has issued jointly with the Agencies, NCUA will make that decision jointly with the Agencies. Any rulemaking to amend or revise those rules would similarly be undertaken jointly and will provide the public with an opportunity to comment on any

[1] Credit unions are also subject to regulations issued by other non-banking agencies, such as rules issued by the Department of Housing and Urban Development (under Real Estate Settlement Procedures Act of 1974) and by the Department of the Treasury (under the Bank Secrecy Act including rules required by the USA Patriot Act). The rules of these other agencies are beyond the scope of the EGRPRA review and the NCUA's jurisdiction. To the extent the NCUA receives comments raising significant issues regarding these related rules, however, it intends to identify the issues in the Report to Congress and will also notify the related agencies of the substance of the relevant comments.

[2] Interpretive Ruling and Policy Statement (IRPS) 87–2, 52 FR 35231 (September 8, 1987) as amended by IRPS 03–2, 68 FR 32127 (May 29, 2003).

[3] Consistent with section 2222's focus on reducing burden on insured institutions, NCUA will not publish its internal organizational and operational regulations to the extent that those regulations impose no, or minimal, burden on insured credit unions.

proposed amendment. NCUA will separately determine whether amendments to its own rules are appropriate in light of comments submitted during the EGRPRA review and, if so, will separately initiate a rulemaking to modify its rules.

NCUA has prepared two charts to assist public understanding of the organization of its section 2222 review. The first chart, at V.A., presents the two categories of regulations on which NCUA is requesting burden reduction recommendations in this notice. The two categories are shown in the left column. In the middle column are the subject matters that fall within the categories and in the far right column are the regulatory citations. The second chart, at V.B., presents the remaining eight categories in alphabetical order in a similar format.

IV. Request for Burden Reduction Recommendations About the First Two Categories of Regulations: ''Applications and Reporting'' and ''Powers and Activities'

NCUA is asking the public to identify areas of regulations within two categories—''Applications and Reporting,'' and ''Powers and Activities''—that impose outdated, unnecessary, or unduly burdensome regulatory requirements on federally-insured credit unions. It is not necessary for the public to provide burden reduction recommendations about categories of rules other than these two categories at this time since NCUA will publish the remaining categories before the end of the first review cycle in 2006. Comments that cite particular provisions or language, and provide reasons why such provisions should be changed, would be most helpful to NCUA's review efforts. Suggested alternative provisions or language, where appropriate, would also be helpful. If the implementation of a comment would require modifying a statute that underlies the regulation, the comment should, if possible, identify the needed statutory change.

Specific issues for commenters to consider. While all comments related to any aspect of section 2222 are welcome, NCUA invites comment on the following issues:

- *Need and purpose of the regulations.* Do the regulations in these categories fulfill current needs? Have industry or other circumstances changed since a regulation was written such that the regulation is no longer necessary? Have there been shifts within the industry or consumer actions that suggest a re-focus of the underlying regulations?

Do any of the regulations in these categories impose burdens not required by their authorizing statutes?

- *Need for statutory change.* Do the statutes impose unnecessary requirements? Are any of the statutory requirements underlying these categories redundant, conflicting or otherwise unduly burdensome?
- *Overreaching approaches/flexibility of the regulatory standards.* Generally, is there a different approach to regulating that NCUA could use that would achieve statutory goals while imposing less burden? Do any of the regulations in these categories or the statutes underlying them impose unnecessarily inflexible requirements?
- *Effect of the regulations on competition.* Do any of the regulations in these categories or the statutes underlying them create competitive disadvantages for credit unions compared to another part of the financial services industry?
- *Reporting, recordkeeping and disclosure requirements.* Do any of the regulations in these categories or the statutes underlying them impose particularly burdensome reporting, recordkeeping or disclosure requirements? Are any of these requirements similar enough in purpose and use so that they could be consolidated? What, if any, of these requirements could be fulfilled electronically to reduce their burden?
- *Consistency and redundancy.* Do any of the regulations in these categories impose inconsistent or redundant regulatory requirements that are not warranted by the circumstances?
- *Clarity.* Are the regulations in these categories and the underlying statutes drafted in clear and easily understood language? Are there specific regulations or underlying statutes that need clarification?
- *Burden on small insured institutions.* NCUA has a particular interest in minimizing burden on small insured credit unions (those with less than $10 million in assets). NCUA solicits comment on whether any regulations within these categories should be continued without change, amended or rescinded in order to minimize any significant economic impact the regulations may have on a substantial number of small federally-insured credit unions.

V. A. Regulations About Which Burden Reduction Recommendations Are Requested Currently

Category	Subject	Reg. Cite
1. Applications and Reporting.	Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or in Troubled Condition.	12 CFR 701.14.
	Field of Membership/Chartering	12 CFR 701.1; IRPS 03–1.
	Fees Paid by Federal Credit Unions	12 CFR 701.6.
	Conversion of Insured Credit Unions to Mutual Savings Banks	12 CFR part 708a.
	Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status.	12 CFR part 708b.
	Applications for Insurance	12 CFR 741.0; 741.3; 741.4; 741.6.
	Conversion to a state-chartered credit union	12 CFR 741.7.
	Purchase of assets and assumption of liabilities	12 CFR 741.8.
2. Powers and Activities: a. Lending, Leasing and Borrowing.	Loans to Members and Lines of Credit to Members	12 CFR 701.21.
	Participation Loans	12 CFR 701.22.
	Borrowed Funds from Natural Persons	12 CFR 701.38.
	Statutory Lien	12 CFR 701.39.
	Leasing	12 CFR part 714.
	Member Business Loans	12 CFR part 723.

Category	Subject	Reg. Cite
	Maximum Borrowing	12 CFR 741.2.
b. Investment and Deposits.	Investment and Deposit Activities	12 CFR part 703.
	Fixed Assets	12 CFR 701.36.
	Credit union Service Organizations (CUSOs)	12 CFR part 712.
	Payment on Shares by Public Units and Nonmembers	12 CFR 701.32.
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34.
	Share, Share Draft, and Share Certificate Accounts	12 CFR 701.35.
	Treasury Tax and Loan Depositories; Depositories and Financial Agents of the Government.	12 CFR 701.37.
	Refund of Interest	12 CFR 701.24.
c. Miscellaneous Activities.	Incidental Powers	12 CFR part 721.
	Charitable Contributions and Donations	12 CFR 701.25.
	Credit Union Service Contracts	12 CFR 701.26.
	Purchase, Sale and Pledge of Eligible Obligations	12 CFR 701.23.
V. B. Categories and Regulations About Which NCUA Will Seek Comment Later		
1. Agency Programs	Community Development Revolving Loan Program	12 CFR part 705.
	Central Liquidity Facility	12 CFR part 725.
	Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.	12 CFR 701.34.
	Regulatory Flexibility Program	12 CFR part 742.
2. Capital	Prompt Corrective Action	12 CFR part 702.
	Adequacy of Reserves	12 CFR 741.3(a).
3. Consumer Protection	Nondiscrimination Requirement (Fair Housing)	12 CFR 701.31.
	Truth in Savings (TIS)	12 CFR part 707.
	Loans in Areas Having Special Flood Hazards	12 CFR part 760.
	Privacy of Consumer Financial Information	12 CFR part 716.
	Share Insurance	12 CFR part 745.
	Advertising	12 CFR part 740.
	Disclosure of Share Insurance	12 CFR 741.10.
	Notice of termination of Excess Insurance Coverage	12 CFR 741.5.
	Uninsured Membership Shares	12 CFR 741.9.
4. Corporate Credit Unions	Corporate Credit Unions	12 CFR part 704.
5. Directors, Officers and Employees.	Loans and Lines of Credit to Officials	12 CFR 701.21(d).
	Reimbursement, Insurance and Indemnification of Officials and Employees	12 CFR 701.33.
	Benefits for Employees of Federal Credit Unions	12 CFR 701.19.
	Management Official Interlocks	12 CFR part 711.
	Fidelity Bond and Insurance Coverage	12 CFR 713.
6. Money Laundering	Report of Crimes or Suspected Crimes	12 CFR 748.1(c).
	Bank Secrecy Act	12 CFR 748.2.
7. Rules of Procedure	Liquidation (Involuntary and Voluntary)	12 CFR parts 709 and 710.
	Uniform Rules of Practice and Procedure	12 CFR part 747 subpart A.
	Local Rules of Practice and Procedure	12 CFR part 747 subpart B.
8. Safety & Soundness	Lending	12 CFR 701.21.
	Investments	12 CFR part 703.
	Supervisory Committee Audits and Verifications	12 CFR part 715.
	Security Programs	12 CFR 748.
	Guidelines for Safeguarding Member Information	12 CFR part 748, Appendix A.
	Records Preservation Program and Record Retention Appendix	12 CFR part 749.
	Appraisals	12 CFR 722.
	Examination	12 CFR 741.1.
	Regulations Codified Elsewhere in NCUA's Regulations as applying to Federal Credit Unions that also apply to Federally insured state-chartered credit unions.	12 CFR part 741, subpart B.

By the National Credit Union Administration Board on June 26, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–16795 Filed 7–2–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to update and clarify the definitions of certain terms used in NCUA's loan participation rule. Specifically, the definition of ''credit union organization'' is being amended to conform to the terms of the credit union service organizations (CUSOs) rule. Also, the definition of ''financial

organization'' is being broadened to provide federal credit unions (FCUs) greater flexibility in choosing appropriate loan participation partners.

DATES: Comments must be received on or before September 2, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or email comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Engaging in loan participations is an effective tool for FCUs to manage liquidity and concentration risk. It is also a way for FCUs to comply with NCUA or self-imposed lending limits. Additionally, small FCUs are able to improve the diversification of their loan portfolios by participating in loans originated by larger FCUs that have the resources to underwrite a wider variety of loan types. For these and other benefits, it is not surprising that FCU interest in loan participations appears to be increasing.

NCUA staff has identified § 701.22, the loan participation rule, as a regulation in need of updating and clarification. Accordingly, NCUA is proposing the following amendments to improve the rule.

Section 701.22 of NCUA's regulations provides that an FCU may engage in loan participations with ''eligible organizations'' and defines that term as a credit union, credit union organization, or financial organization. 12 CFR 701.22(b), 12 CFR 701.22(a)(2). The rule further defines ''credit union organization'' and ''financial organization.'' 12 CFR 701.22(a)(4) and (a)(5).

The Federal Credit Union Act (Act) defines ''credit union organization'' as ''any organization as determined by the Board, which is established primarily to serve the needs of its member credit unions, and whose business relates to the daily operations of the credit unions they serve.'' 12 U.S.C. 1757(5)(D). Section 701.22(a)(4) echoes this definition, but specifically excludes, among others, some CUSOs, which it describes as ''corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.'' 12 CFR 701.22(a)(4). Formerly, NCUA's CUSO rule distinguished between CUSOs providing operational services to FCUs and those providing financial services to FCU members.

In a 1998 final rule, NCUA eliminated that distinction in the CUSO rule. 63 FR 10743 (March 5, 1998). Under NCUA's regulations, CUSOs are entities that engage in providing products and services related to the routine daily operations of credit unions to credit unions and credit union members. 12 CFR 712.3, 12 CFR 712.5. NCUA proposes to amend the definition of ''credit union organization'' in the loan participation rule to conform to NCUA's interpretation of that term in the CUSO rule.

The Act does not define the term ''financial organization.'' Section 701.22(a)(5) defines it as ''any federally chartered or federally insured financial institution.'' 12 CFR 701.22(a)(5). Although the Act is silent, the rule derives its definition from the legislative history of the 1977 public law that granted FCUs various additional authorities, including the authority to engage in loan participations. H.R. Rep. No. 95–23, at 12 (1977), *reprinted* in 1977 U.S.C.C.A.N. 115. In granting this authority, Congress expressed its intent to enhance the ability of FCUs to serve their members' loan demands. Congress also expressed its concern that originating FCUs must maintain discipline in the origination process. To ensure that discipline and good underwriting standards prevail, Congress requires originating FCUs to retain at least a ten percent interest in the face amount of all loans they participate out.

Consistent with congressional intent to enhance the ability of FCUs to serve their members' loan demands through participations, NCUA believes it is appropriate to expand the regulatory definition of ''financial organization'' to include state and federal government agencies. NCUA is aware that there are various state and federal government supported loan programs that are particularly geared to underserved borrowers. These types of programs, which include agricultural and small business lending, are ideally suited to the mission of FCUs. Also, this will give FCUs greater flexibility in choosing appropriate participation partners. NCUA does not read anything in the legislative history to suggest that Congress would object to this limited and prudent amendment.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under one million dollars in assets). The proposed rule expands the pool of eligible organizations with whom an FCU may engage in loan participations, without imposing any additional regulatory burden. The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—-Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 701

Credit unions, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 26, 2003.

Becky Baker,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789 and P.L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. Section 701.22 is amended by revising paragraphs (a)(4) and (a)(5) to read as follows:

§ 701.22 Loan participation.

(a) * * *

(4) *Credit union organization* means any credit union service organization meeting the requirements of part 712 of this chapter. This term does not include trade associations or membership organizations principally composed of credit unions.

(5) *Financial organization* means: (i) Any federally chartered or federally insured financial institution; and

(ii) Any state or federal government agency and their subdivisions.

* * * * *

[FR Doc. 03–16793 Filed 7–2–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance and Appendix

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule with request for comments.

SUMMARY: NCUA proposes to amend its share insurance rules. The amendments simplify and clarify these rules and provide parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). Specifically, the amendments: clarify how revocable trust accounts are established and insured; provide continuation of coverage following the death of a member and for separate coverage after the merger of insured credit unions for limited periods of time; and clarify that there is coverage for Coverdell Education Savings Accounts, formerly Education IRAs.

DATES: Comments must be received on or before September 2, 2003.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or email comments to *regcomments@ncua.gov* instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In accordance with NCUA's regulatory review process, NCUA staff has identified part 745 as a regulation in need of updating, clarification and simplification. To that end, NCUA is proposing the below amendments to improve part 745 and to maintain parity between the separate federal insurance programs administered by NCUA and FDIC.

B. Proposed Amendments

Revocable Trust Accounts

A revocable trust account is a testamentary account that evidences the owner's intent to have funds in the account pass to named beneficiaries upon the owner's death. NCUA is increasingly receiving inquiries from credit unions and credit union members regarding three aspects of revocable trust accounts. Specifically, these inquiries concern how: (1) Revocable trusts are created; (2) an owner demonstrates testamentary intent; and (3) the interests of nonqualifying beneficiaries are treated.

Unlike more complicated trusts such as living trusts, which require formal, often complex, written trust documents, simple revocable trusts can be created at the credit union merely by indicating that intent in the title to an account. Common terms used in the account title to create a revocable trust and indicate the owner's intent include ''payable on death'', ''in trust for'', and ''as trustee for'', or acronyms for these phrases, respectively, POD, ITF and ATF. For example, the account title ''John Smith POD to Mary Smith'' is sufficient to create a revocable trust account. Although not preferable, the account title ''John Smith POD'' is also sufficient to create a revocable trust account. To be insurable as a revocable trust account, however, the beneficiaries must be specifically named in the credit union's account records. NCUA believes that naming the beneficiaries in the account title is the most effective way of establishing insurance coverage.

NCUA's share insurance rules provide that an owner's funds in a revocable trust account are separately insured up to $100,000 for each qualifying beneficiary named in the account. 12 CFR 745.4. A qualifying beneficiary is the owner's spouse, child, grandchild, parent, brother or sister. *Id.* All others are nonqualifying beneficiaries.

NCUA treats the interests of nonqualifying beneficiaries named in the revocable trust account as the individually owned funds of the owner of the account. In this context, these funds would be aggregated with all other individual accounts of the owner and insured up to $100,000. The current language of § 745.4(c) could be read as providing that these nonqualifying beneficiary interests will only be insured as the individually owned funds of the owner if the owner has actually opened an individual account in the insured credit union where the revocable trust account is held. 12 CFR 745.4(c). NCUA proposes to revise that section to make clear that it will treat nonqualifying beneficiary interests as the individually owned funds of the owner even where the owner has not actually opened an individual account at the credit union. This is consistent with FDIC's treatment of these funds.

Insurance Coverage Following the Death of a Member

The death of a member results in an immediate change in the ownership of the member's share accounts. This change in ownership could significantly change the amount of share insurance coverage available for those accounts, most likely reducing coverage.

For example, a husband and wife may hold a joint account, a joint revocable trust account for the benefit of their two children, and two individual accounts in their own names. Assuming these accounts satisfy all applicable requirements, these four accounts would be insured up to a maximum of $800,000. The $800,000 is broken down as follows: $200,000 for the joint account; $400,000 for the joint revocable trust account; and $100,000 for each of the two individual accounts. Upon the death of either the husband or wife,

however, the surviving spouse would become the sole owner of the joint account and the joint revocable trust account. Under NCUA share insurance rules, the joint account would be transformed into an individual account subject to aggregation with the surviving spouse's other individual account and insured up to a maximum of $100,000. The single ownership (individual) account in the name of the deceased spouse would continue to be insured separately from the other accounts. The maximum coverage of the joint revocable trust account would be reduced from $400,000 to $200,000, because coverage for this type of account is calculated as $100,000 for each combination of settlors and qualifying beneficiaries. In sum, the maximum coverage of the four accounts would be reduced immediately upon the death of the husband or wife from $800,000 to $400,000.

NCUA does not believe this result is fair or desirable. NCUA recognizes there are a number of practical difficulties a member's survivors might encounter in attempting to restructure the member's share accounts immediately upon the member's death. NCUA further recognizes that these difficulties are worsened in that they would occur at a time of grief when dealing with financial matters may not be a priority for the member's survivors. Accordingly, NCUA believes it would be beneficial to grant a six-month grace period after a member's death for his or her survivors to restructure the accounts. During this grace period, the insurance coverage of the deceased member's accounts would not change from that available immediately before the member's death, unless the accounts are restructured during the grace period by those authorized to do so. Because the intent of this grace period is to avoid reduced insurance coverage, the grace period will not be applied if doing so would result in decreased share insurance coverage.

Insurance Coverage After the Merger of Insured Credit Unions

NCUA encourages members to structure their accounts at insured credit unions in a manner that will provide maximum share insurance coverage and has developed a share insurance program to facilitate that goal. As part of that program, a member's share accounts at an insured credit union are insured separately from that member's share accounts at any other separately chartered, insured credit union. Because of this, the merger of insured credit unions could jeopardize a member's insurance coverage even when a member has structured his or her accounts at different insured credit unions to be fully insured. Specifically, when a member has accounts at more than one insured credit union, a merger of those credit unions could reduce the amount of share insurance coverage the member had before the merger. For example, member X has a $75,000 individual account at insured credit union A and a $50,000 individual account at insured credit union B. Both accounts are fully insured because a member is entitled to $100,000 of coverage in the aggregate for all individual accounts in each insured credit union. 12 CFR 745.1; 12 CFR 745.3. If insured credit unions A and B merge, then X would have individual accounts in the surviving insured credit union totaling $125,000. X would be insured for $100,000 and uninsured for $25,000.

NCUA does not believe members should immediately have reduced share insurance coverage as a result of credit union mergers. Accordingly, NCUA proposes to provide members with a six-month grace period following the merger of insured credit unions, during which time members will receive separate insurance of their accounts as though no merger had occurred. NCUA believes six months is sufficient time for members to restructure their accounts to maximize share insurance coverage.

A share certificate that matures after the six-month grace period will receive the separate insurance treatment until the first maturity date following the grace period. A share certificate that matures during the six-month grace period and is renewed for the same term and dollar amount will receive the separate insurance treatment until the first maturity date after the grace period under the terms of the renewed certificate. A share certificate that matures during the grace period that is not renewed, or is renewed on any basis other than for the same term and dollar amount as the original certificate, is separately insured only for the six-month grace period.

Coverdell Education Savings Accounts

In May 2000, Education IRAs were specified as insurable under NCUA's share insurance rules as irrevocable trust accounts. 65 FR 34921 (June 1, 2000). Since that time, Education IRAs have been replaced with Coverdell Education Savings Accounts. NCUA proposes to revise the share insurance rules to reflect that change.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under one million dollars in assets). The proposed rule only clarifies the share insurance coverage available to credit union members, without imposing any regulatory burden. The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive.

List of Subjects in 12 CFR Part 745

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions.

By the National Credit Union Administration Board on June 26, 2003.

Becky Baker,

Secretary of the Board.

For the reasons stated above, NCUA proposes to amend 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789.

2. Section 745.2 is amended by adding paragraphs (e) and (f) to read as follows:

§ 745.2 General principles applicable in determining insurance of accounts.

* * * * *

(e) *Continuation of insurance coverage following the death of a member.* The death of a member will not affect the member's share insurance coverage for a period of six months following death unless the member's share accounts are restructured in that time period. If the accounts are restructured during the six-month grace period, or upon the expiration of the six months if not restructured, the share insurance coverage will be provided on the basis of actual ownership of the accounts in accordance with the provisions of this part. The operation of this grace period, however, will not result in a reduction of coverage.

(f) *Continuation of separate share insurance coverage after merger of insured credit unions.* Whenever the liability to pay the member accounts of one or more insured credit unions is assumed by another insured credit union, whether by merger, consolidation, other statutory assumption or contract:

(1) The insured status of the credit unions whose member account liability has been assumed terminates, for purposes of this section, on the date of receipt by NCUA of satisfactory evidence of the assumption; and

(2) The separate insurance of member accounts assumed continues for six months from the date the assumption takes effect or, in the case of a share certificate, the earliest maturity date after the six-month period. In the case of a share certificate that matures within the six-month grace period that is renewed at the same dollar amount, either with or without accrued dividends having been added to the principal amount, and for the same term as the original share certificate, the separate insurance applies to the renewed share certificate until the first maturity date after the six-month period. A share certificate that matures within the six-month grace period that is renewed on any other basis, or that is not renewed, is separately insured only until the end of the six-month grace period.

3. Section 745.4 is amended by adding two sentences to the end of paragraph (a) and revising paragraph (c) to read as follows:

§ 745.4 Revocable trust accounts.

(a) * * * This required intention must be demonstrated in the title of the account using commonly accepted terms such as, but not limited to, ''in trust for'', ''as trustee for'', ''payable on death to'', or any acronym for these terms. In addition, the beneficiaries must be specifically named in the share account records of the insured credit union.

* * * * *

(c) If the named beneficiary of a revocable trust account is other than the spouse, child, grandchild, parent, brother or sister of the account owner, the funds corresponding to that beneficiary shall be treated as an individually owned account of the owner, aggregated with any other individually owned accounts of the owner, and insured up to $100,000. For example, if A establishes an account payable upon death to his nephew, the account would be insured as an individual account owned by A. Similarly, if B establishes an account payable upon death to her husband, son and nephew, two-thirds of the account balance would be eligible for revocable trust account coverage up to $200,000 corresponding to the two qualifying beneficiaries, the spouse and child. The amount corresponding to the non-qualifying beneficiary, the nephew, would be deemed to be owned by B as an individual account and insured accordingly.

* * * * *

4. Section 745.9–1 is amended by revising paragraph (c) to read as follows:

§ 745.9–1 Trust accounts.

* * * * *

(c) This section applies to trust interests created in Coverdell Education Savings Accounts, formerly Education IRAs, established in connection with section 530 of the Internal Revenue Code (26 U.S.C. 530).

5. The Appendix to part 745 is amended by revising the third sentence of Section B to read as follows:

Appendix to Part 745—Examples of Insurance Coverage Afforded Accounts in Credit Unions Insured by the National Credit Union Share Insurance Fund

* * * * *

B. How Are Revocable Trust Accounts Insured?

* * * If the named beneficiary of a revocable trust account is other than the spouse, child, grandchild, parent, brother or sister of the account owner, the funds corresponding to that beneficiary shall be treated as an individually owned account of the owner, aggregated with any other individually owned accounts of the owner, and insured up to $100,000. * * *

* * * * *

[FR Doc. 03–16794 Filed 7–2–03; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–29–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain PILATUS Aircraft Ltd. (Pilatus) Model PC–7 airplanes. This proposed AD would require you to inspect the forward and aft dihedral fittings for cracks and replace any cracked fitting. This proposed AD would also require you to modify the aft dihedral fitting and spar-cap bolt holes. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by this proposed AD are intended to prevent cracks from developing in the forward and aft dihedral fittings, which could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 4, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–29–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–29–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

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

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–29–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports that an operator of a similar aircraft type design, which uses identical dihedral fittings, reported a crack in one fitting. An inspection of the fleet revealed stress corrosion cracking in six aft dihedral fittings. Each cracked fitting was found on airplanes that had logged more than 3,000 hours time-in-service (TIS) or had been in service for 10 years or more.

What are the consequences if the condition is not corrected? Cracks in the forward and aft dihedral fittings could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.

What are the provisions of this service information? The service bulletin includes procedures for:

—inspecting the forward and aft dihedral fittings for cracks; and

—modifying the aft dihedral fitting and spar-cap bolt holes.

What action did the FOCA take? The FOCA classified this service information as mandatory and issued Swiss AD Number HB 2003–196, dated May 12, 2003, in order to ensure the continued airworthiness of these airplanes in Switzerland.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in Switzerland and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the FOCA has kept FAA informed of the situation described above.

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

What has FAA decided? The FAA has examined the findings of the FOCA; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other Pilatus Model PC–7 airplanes of the same type design that are on the U.S. registry;

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

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

What would this proposed AD require? This proposed AD would require you to:

—inspect the forward and aft dihedral fittings for cracks;

—replace any cracked fittings found; and

—modify the aft dihedral fittings and spar-cap bolt holes.

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

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 10 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed actions of this AD:

INSPECTIONS

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours per fitting (4 fittings per airplane) × $60 per hour = $180 per fitting.	Not applicable	$180 × 4 fittings per airplane = $720.	$720 × 10 = $7,200.

FORWARD DIHEDRAL FITTING REPLACEMENT

Labor cost	Parts cost	Total cost per airplane
93 workhours per fitting (2 fittings per airplane) × $60 per hour = $5,580 per fitting	$142 per replacement fitting	$5,722 per fitting

AFT DIHEDRAL FITTING REPLACEMENT AND MODIFICATION

Labor cost	Parts cost	Total cost per airplane
20 workhours per fitting for replacement and modification (2 fittings per airplane) × $60 per hour = $1,200 per fitting.	$76 per replacement fitting and $66 for modification bolts.	$1,200 + $76 + $66 = $1,342 (labor, replacement, and modification per fitting).
10 workhours per fitting for modification only (2 fittings per airplane) × $60 per hour = $600 per fitting.	.....	$600 + $66 = $666 (labor and modification per fitting).

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is whichever occurs later: (1) upon the accumulation of 3,000 hours time-in-service (TIS) on the dihedral fittings or 10 years after installation of the dihedral fittings, whichever occurs first; or (2) within 90 days after the effective date of the proposed AD.

Why is the compliance time of this proposed AD presented in both hours TIS and calendar time? Cracking of the dihedral fittings on the affected airplanes is caused by stress corrosion, which starts as a result of high local stress incurred through operation. Corrosion can then develop regardless of whether the airplane is in flight or on the ground. The cracks may not be noticed initially as a result of the stress loads, but could then progress as a result of corrosion. The stress incurred during flight operations or temperature changes could then cause rapid crack growth. In order to ensure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time is utilized.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. 2003–CE–29–AD

(a) *What airplanes are affected by this AD?* This AD affects Model PC–7 airplanes, manufacturer serial numbers (MSN) 101 through 618, that are:

(1) equipped with forward and aft dihedral fittings, part number (P/N) 111.34.07.469, 111.34.07.470, 111.34.07.471, and P/N 111.34.07.472; and

(2) certificated in any category.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent cracks from developing in the forward and aft dihedral fittings, which could result in failure of the wing in certain maneuvers. Such failure could lead to loss of control of the airplane.

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

Actions	Compliance	Procedures
(1) Accomplish the following inspections: (i) Using Impedance-Plane Eddy-Current inspection procedures, inspect the aft dihedral fittings, P/N 111.34.07.469 and P/N 111.34.07.470, for cracks; and (ii) Using Radiographic inspection procedures, inspect the forward dihedral fittings, P/N 111.34.07.471 and P/N 111.34.07.472, for cracks.	At whichever of the following occurs later, unless already accomplished: upon the accumulation of 3,000 hours time-in-service (TIS) on the dihedral fittings or 10 years after installation of the dihedral fittings, whichever occurs first; or within 90 days after the effective date of this AD.	Inspect in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.
(2) If a crack is found in any aft dihedral fittings, P/N 111.34.07.469 and/or P/N 111.34.07.470, replace with an improved fitting, P/N 557.10.09.071 and/or P/N 557.10.09.072 (as applicable or FAA-approved equivalent P/N), and modify the spar-cap bolt holes.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Modify in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.
(3) If no cracks are found in any aft dihedral fittings, P/N 111.34.07.469 and P/N 111.34.07.470, modify the fittings and the spar-cap bolt holes.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Modify in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.
(4) If cracks are found in any forward dihedral fittings, P/N 111.34.07.471 and/or P/N 111.34.07.472, replace with a new part.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Not applicable.
(5) If no cracks are found in any forward dihedral fittings, P/N 111.34.07.471 and P/N 111.34.07.472, no further action is required.	Not applicable.	Not applicable.
(6) Only install aft dihedral fittings that have a P/N of 557.10.09.071 and P/N 557.10.09.072. You must also accomplish the spar-cap bolt hole modification.	As of the effective date of this AD.	Modify the spar-cap bolt holes in accordance with Pilatus PC–7 Service Bulletin No. 57–006, Revision No. 3, dated January 15, 2003.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The subject of this AD is addressed in Swiss AD HB 2003–196, dated May 12, 2003.

Issued in Kansas City, Missouri, on June 26, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–16844 Filed 7–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 00P–0685]

Milk and Cream Products and Yogurt Products; Petition to Revoke Standards for Lowfat Yogurt and Nonfat Yogurt and to Amend Standards for Yogurt and Cultured Milk

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a petition has been filed requesting that the agency revoke the standards of identity for lowfat yogurt and nonfat yogurt; amend the standard of identity for yogurt in numerous respects, including incorporation of provisions for lowfat and nonfat yogurt; and amend the standard of identity for cultured milk in numerous respects, including allowing for the use of the alternate term ''fermented milk.'' We request comment on whether the actions requested by the petition would promote honesty and fair dealing in the interest of consumers.

DATES: Submit written or electronic comments by October 1, 2003.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. The petition is available for review at the Division of Dockets Management or electronically on FDA's Web site at *http://www.fda.gov/ohrms/dockets/98fr/00p-0685-cp00001.pdf*. You may also request a copy of the petition from the Division of Dockets Management.

FOR FURTHER INFORMATION CONTACT: Ritu Nalubola, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug

Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION:

I. The Petition

The National Yogurt Association (NYA) submitted a citizen petition on February 18, 2000, requesting that FDA revoke the standards of identity in part 131 (21 CFR part 131) for lowfat yogurt (§ 131.203) and nonfat yogurt (§ 131.206), amend the current standard of identity for yogurt (§ 131.200), and amend the standard of identity for cultured milk (§ 131.112).

In its petition, NYA stated that its proposed standard establishes that: (1) Yogurt is a food product containing a minimum level of certain live and active cultures; (2) takes into account current industry practices; (3) recognizes the need to allow for use of future technologies; and (4) establishes a clear, consistent, modernized, and flexible yogurt standard that would benefit both industry and consumers. Specifically, NYA's proposed yogurt standard: (1) Requires a minimum level of active cultures of 10^7 colony-forming units (CFU) per gram (/g); (2) requires an acidity of pH 4.6 or lower; (3) requires a minimum level of total dairy ingredients of 51 percent; (4) provides for preculture homogenization and pasteurization; (5) permits the use of reconstituted milk and whey protein concentrate (WPC) as ''standard dairy ingredients''; (6) provides for the use of any milk-derived ingredients under optional dairy ingredients; (7) permits the use of safe and suitable sweeteners, emulsifiers, and preservatives; (8) permits the optional use of any safe and suitable ingredients added for nutritional or functional purpose; and (9) makes provisions for lowfat and nonfat yogurts based on total fat content of the food per reference amount customarily consumed (RACC). In addition, NYA requested that the current standard of identity for cultured milk be amended to ''conform'' to the proposed standard for yogurt. Specifically, NYA's proposed amendments to the cultured milk standard: (1) Provide for the alternate term ''fermented milk''; (2) require a minimum level of total dairy ingredients of 51 percent; (3) permit the use of reconstituted milk and WPC as ''standard dairy ingredients''; (4) provide for the use of any milk-derived ingredient under optional dairy ingredients; (5) permit the use of safe and suitable sweeteners, emulsifiers, and preservatives; and (6) permit the use of any safe and suitable ingredients added for a nutritional or functional purpose.

FDA is publishing this document in accordance with section 701(e)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(1)), which directs the Secretary of Health and Human Services to publish proposals made by petition to amend or repeal a dairy food standard, so long as the petition includes reasonable grounds for the action requested, and to provide interested persons with an opportunity to present their views. FDA tentatively finds that NYA's petition presents reasonable grounds. Therefore, FDA requests comment on whether the actions proposed in the petition would promote honesty and fair dealing in the interest of consumers.

II. Grounds for the Suggested Changes to Yogurt, Lowfat Yogurt, Nonfat Yogurt, and Cultured Milk Standards

NYA pointed out that several provisions of the standards of identity for cultured milk, yogurt, lowfat yogurt, and nonfat yogurt are currently stayed (47 FR 41519, September 21, 1982). The stayed provisions are: (1) Those provisions of §§ 131.112(d)(1), 131.200(c)(1), 131.203(c)(1), and 131.206(c)(1) that restrict the type of milk-derived ingredients that may be used, to those so named, to increase the nonfat solids content of cultured milk and yogurts; (2) those provisions of §§ 131.200(a), 131.203(a), and 131.206(a) that exclude the use of reconstituted dairy ingredients as the basic ingredient in the manufacture of yogurts; (3) those provisions of §§ 131.200(c), 131.203(c), and 131.206(c) insofar as they exclude the addition of preservatives to yogurts; (4) those provisions of §§ 131.200(a), 131.203(a), and 131.206(a) that set a minimum titratable acidity of 0.9 percent, expressed as lactic acid; and (5) the provision in § 131.200(a) that the 3.25 percent minimum milkfat level applies to yogurt after the addition of one or more of the optional sources of milk solids not fat listed in § 131.200(c)(1). NYA contended that these stayed provisions create multiple gaps in the standards for which no guidelines exist and, as a result, the integrity of the food ''yogurt'' is not maintained.

According to NYA, yogurt has been characterized for centuries by its live and active cultures, and thus a minimum content of live and active cultures is crucial to the yogurt standard of identity to promote honesty and fair dealing in the interest of consumers. NYA noted that consumers identify yogurt with live and active cultures and expect yogurt to contain a significant amount of these cultures when they purchase the product, but have no assurance under the current standard that the yogurt will contain such cultures. NYA maintained that its proposed standard recognizes the defining characteristics of yogurt and establishes that yogurt is a product of fermentation of certain characterizing cultures, and that the finished food contains a significant quantity of these live and active cultures consistent with consumer expectations.

NYA also stated that the proposed amendments to the standard for cultured milk would further serve consumer interest. Under its proposed actions, NYA maintained that foods otherwise satisfying the standard of identity for yogurt that do not contain the required level of the characterizing live and active cultures would not be named ''yogurt''; rather they would be named ''cultured milk'' or ''fermented milk.'' Consequently, NYA stated, consumers would not be misled into believing that these foods contain a significant amount of live and active cultures.

NYA also maintained that its proposal would ensure that aspects of yogurt labeling, such as the use of nutrient content claims, are consistent with the requirements of the Nutrition Labeling and Education Act of 1990 (NLEA) (Public Law 101–535). NYA stated that its proposed standard maintains the three yogurt types (full fat, lowfat, and nonfat yogurts) so manufacturers can continue to make lowfat and nonfat yogurts without meeting the nutritional equivalence requirement as described in § 130.10 (21 CFR 130.10). In addition, NYA maintained that its proposed standard would change the milkfat content requirements of lowfat and nonfat yogurts to ''directly parallel'' the nutrient content claim requirements for the terms ''lowfat'' and ''nonfat'' established under the NLEA (21 CFR 101.62(b)).

Additionally, NYA noted that food technology has advanced and industry practices related to yogurt manufacturing have changed since the yogurt standards have been in place. Consequently, NYA asserted that the current yogurt standards impede the yogurt industry and do not allow manufacturers to implement advances in food technology. NYA stated that its proposed standard establishes a modernized, flexible standard of identity for yogurt, taking into account current industry practices and recognizing the need to allow for use of future technologies.

III. Matters of Particular Interest to FDA

FDA requests that interested persons submit data and information concerning the need for, and the appropriateness of, revoking the standards for lowfat and nonfat yogurt and amending the standards for yogurt and cultured milk. FDA specifically requests comment on the following provisions set forth in the petition:

1. A single standard of identity for yogurt, which includes provisions for lowfat and nonfat yogurts;

2. A minimum of 10^7 CFU/g of live and active characterizing cultures at the time of manufacture of yogurt;

3. An acidity of pH 4.6 or lower, rather than the current requirement of titratable acidity expressed as lactic acid in yogurt;

4. The use of optional milk-derived ingredients after pasteurization and culturing of yogurt;

5. The use of reconstituted dairy ingredients and WPC as basic dairy ingredients in yogurt, and the specifications related to WPC, when used;

6. The optional use of any milk-derived ingredient that provides a technical or functional purpose in yogurt;

7. The minimum dairy ingredients content requirement of 51 percent of the total weight of yogurt;

8. The use of any safe and suitable nutritive or nonnutritive sweeteners in yogurt;

9. The use of safe and suitable emulsifiers in yogurt;

10. The use of safe and suitable preservatives in yogurt;

11. The use of any safe and suitable ingredient added for a nutritional or functional purpose in yogurt;

12. The use of the descriptor ''nonfat'' on a yogurt that may contain less than 0.5 g of total fat per RACC (i.e., 225 g for yogurt (21 CFR 101.12));

13. The use of the descriptor ''lowfat'' on a yogurt that may contain at least 0.5 g but not more than 3.0 g total fat per RACC; and

14. The need to amend the standard for cultured milk to provide for the alternate term ''fermented milk'' and to make it consistent with any changes made in the standard for yogurt, and the appropriateness of the proposed amendments to the standard for cultured milk.

After reviewing the comments received, FDA will determine the need for, and appropriateness of, each of the amendments requested by NYA and will decide what actions are appropriate. To facilitate comment, in the following paragraphs FDA discusses some of the amendments requested by NYA.

1. The standards for yogurt and cultured milk proposed by NYA permit the use of any safe and suitable ingredient added for a nutritional or functional purpose. NYA states that this provision is necessary to maintain enough flexibility in the standards to permit the use of novel ingredients as they are developed. FDA recognizes the need for food standards to permit flexibility in food technology, so long as that technology does not alter the basic nature or essential characteristics of the food. The existing regulatory framework governing standardized foods already provides for the addition of substances for a nutritional purpose. Under the provisions of § 130.10, standardized foods may be modified to contain nutrients not specifically permitted by the relevant standard of identity and to make an expressed nutrient content claim defined by FDA regulation. FDA also notes that flexibility in the use of ingredients for a functional purpose may be achieved by specifying the ingredients by functional use category, e.g., ''emulsifiers'' or ''preservatives,'' rather than by listing the specific ingredients. FDA seeks comment on the need for any functional ingredient categories, in addition to the ones proposed by the petition, in the manufacture of yogurt.

2. NYA proposed amendments to the current standard of identity for cultured milk (§ 131.112) to provide for the alternate term ''fermented milk'' and to allow the use of currently prohibited ingredients that would be permitted by NYA's proposed standard for yogurt. NYA stated that under its proposed amendments, if the food otherwise meets the yogurt standard of identity but does not contain the characterizing cultures at the required levels, then the food qualifies as cultured milk or fermented milk. The standard of identity for cultured milk has been in place for several decades. In light of consumer experience with the standard for cultured milk, FDA solicits comment on the need to amend it and the appropriateness of the amendments requested by NYA.

3. The current standards for yogurt, lowfat yogurt, and nonfat yogurt permit heat treatment after culturing, with the requirement that such treatment be declared in the name of the food. FDA notes that NYA's proposed standard does not allow for heat treatment after culturing, and seeks comment on the appropriateness of omitting this provision.

4. NYA proposed a maximum pH of 4.6 for yogurt and stated that this level reflects the lower end of titratable acidity levels found in common industry practice. NYA also stated that measuring pH, rather than titratable acidity expressed as lactic acid, reflects the current industry practice and is a more accurate and convenient method of measuring acidity. FDA seeks comment both on the acidity level proposed by NYA and the use of pH rather than titratable acidity.

5. FDA notes NYA's assertion that consumers expect yogurt to contain significant amounts of live and active cultures, as well as NYA's proposed requirement to measure live and active cultures at the time of manufacture. NYA proposed that manufacturers ''may'' test their yogurt products to demonstrate that the products, under proper distribution and storage conditions, would be expected to contain at least 10^6 CFU/g of live and active cultures through the manufacturer's designated code life (i.e., shelf life) for the product and at the anticipated time of consumption. However, as a legal requirement, NYA proposed a minimum of 10^7 CFU/g at the time of manufacture because, NYA maintained, once the products enter the stream of commerce, products are subject to different distribution and storage conditions that are not within the manufacturer's control. FDA seeks comment on: (1) Whether the presence of live and active cultures is an essential characteristic of yogurt and, if so, in what amounts; (2) the appropriateness of NYA's proposed provision that manufacturers ''may'' conduct tests to ensure the presence of live and active cultures through the assigned code life for the product; and (3) whether NYA's proposed standard of identity for yogurt would adequately ensure the presence of appropriate amounts of live and active cultures in yogurt throughout the shelf life of the product and at the point of purchase or consumption. FDA also seeks comment on any alternative provisions that may be needed to fulfill this requirement.

Finally, FDA seeks comment on vitamin A fortification. FDA previously proposed to revoke a number of lowfat and nonfat standards in parts 131 and 133 (21 CFR part 133) (i.e., §§ 131.122 (Sweetened condensed skimmed milk), 131.123 (Lowfat dry milk), 131.132 (Evaporated skimmed milk), 131.135 (Lowfat milk), 131.136 (Acidified lowfat milk), 131.138 (Cultured lowfat milk), 131.143 (Skim milk), 131.144 (Acidified skim milk), 131.146 (Cultured skim milk), 131.185 (Sour half-and-half), 131.187 (Acidified sour half-and-half), 131.203 (Lowfat yogurt), 131.206 (Nonfat yogurt), and 133.131 (Lowfat

cottage cheese) (60 FR 56541, November 9, 1995)) to ensure that the use of nutrient content claims in the labeling of these products would be consistent with the provisions of the NLEA. In the final rule (61 FR 58991, November 20, 1996), FDA revoked all of the previously mentioned standards except for lowfat yogurt and nonfat yogurt. FDA delayed final action on its proposal to revoke these standards for 120 days because of the technical difficulties and economic considerations associated with their revocation (61 FR 58991 at 58999). FDA acknowledged that if the standards for lowfat and nonfat yogurts were revoked, modifying the standardized food yogurt to make the nutrient content claims ''lowfat'' or ''nonfat'' under the provisions of § 130.10 would require vitamin A fortification to make the product nutritionally equivalent to full fat yogurt. FDA also acknowledged that such a fortification requirement could potentially result in significant relabeling, reformulation, and equipment costs to manufacturers. The agency had hoped that the 120-day deferral would provide an appropriate balance between the problem the industry was facing and consumers' interest in consistently and fairly labeled foods. Unfortunately, this issue has not been resolved. According to the yogurt standard proposed by NYA, manufacturers would continue to be able to make lowfat and nonfat yogurts without having to meet the nutritional equivalence requirement. FDA seeks comment on whether the yogurt industry is better able and equipped to meet the nutritional equivalence requirements of § 130.10 than it was in 1996 when FDA deferred action on this issue. FDA also seeks comment on the need and appropriateness of continuing to exempt yogurt from the nutritional equivalence requirement, unlike other standardized foods making lowfat and nonfat nutrient content claims.

IV. NYA Requested Amendments

The requested amendments of the yogurt standard and the cultured milk standard submitted by NYA are set forth in the following paragraphs. The following language is as suggested by NYA; FDA has made only minor nonsubstantive changes. FDA will evaluate the need and appropriateness of these regulations proposed by NYA following the receipt of public comments.

NYA's suggested standard of identity for yogurt is as follows:

Section 131.200 Yogurt.

(a) *Description.* Yogurt is the food produced by culturing one or more of the standard dairy ingredients specified in paragraph (b) of this section. Yogurt contains at least 10^7 CFU/g active yogurt cultures, at the time of manufacture, of the characterizing lactic acid-producing bacteria, *Lactobacillus delbrueckii subsp. Bulgaricus* and *Streptococcus thermophilus*, and the manufacturer may have records demonstrating that, under proper conditions of distribution and storage, the yogurt will contain at least 10^6 CFU/g live and active cultures through the manufacturer's assigned code life (i.e., shelf life) for the product. One or more of the optional ingredients specified in paragraph (c) of this section may also be added. All ingredients used are safe and suitable. Yogurt, before the addition of optional ingredients specified in paragraph (c) of this section, contains not less than 8.25 percent milk solids not fat from the standard dairy ingredients specified in paragraph (b) of this section, and has a pH of 4.6 or lower. Dairy ingredients comprise at least 51 percent of the food's overall ingredients by weight. The food may be homogenized and the ingredients specified in paragraph (b) of this section shall be pasteurized or ultra-pasteurized prior to the addition of the characterizing yogurt bacterial cultures.

(b) *Standard dairy ingredients.* Cream, milk, partially skimmed milk, skim milk, or the reconstituted versions of these standard dairy ingredients may be used alone or in combination. Whey protein concentrate (WPC), minimum protein concentrate 34 percent, may be used if the total quantity of WPC used in this paragraph and paragraph (c) of this section does not result in a quantity of WPC that exceeds 25 percent of the total milk solids not fat. When one or more of the ingredients specified in this paragraph is used, it shall be included in the culturing process.

(c) *Optional dairy ingredients.* (1) Dairy ingredients. Any milk-derived ingredients used for technical or functional purposes.

(2) Optional safe and suitable cultures, in addition to the characterizing cultures.

(3) Safe and suitable sweeteners.

(4) Flavoring ingredients.

(5) Color additives.

(6) Stabilizers and emulsifiers.

(7) Preservatives.

(8) Vitamins and minerals.

(i) If added, vitamin A shall be present in a minimum quantity of 500 International Units (IU) per reference amount customarily consumed (RACC).

(ii) If added, vitamin D shall be present in a minimum quantity of 100 IU per RACC.

(9) Any safe and suitable ingredients added for nutritional or functional purposes.

(d) *Methods of analysis.* (1) Enumeration of live and active cultures—As determined by the method prescribed by the International Dairy Federation.

(2) Milk solids not fat content—Calculated using the following methods from the ''Official Methods of Analysis of the Association of Official Analytical Chemists,'' 15th Ed. (Copies are available from the Association of Official Analytical Chemists, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2417, or available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC). Subtract the milkfat content (as determined by the method prescribed in section 16.059 ''Roese-Gottlieb Method (Reference method) (11)—Official Final Action, under the heading ''Fat'') from the total milk solids content (as determined by the method prescribed in section 16.032, ''Method I—Official Final Action,'' under the heading ''Total Solids'').

(3) pH—As determined under § 114.90(a) of this chapter, ''Potentiometric method for the determination of pH.''

(e) *Nomenclature.* (1) If the food contains the amount of live and active *Lactobacillus delbrueckii subsp. Bulgaricus* and *Streptococcus thermophilus* cultures as indicated in paragraph (a) of this section, the food is ''yogurt,'' except:

(i) If the finished food complies with the requirements of § 101.62(b)(4)(i) of this chapter, and is not ''lowfat yogurt'' or ''nonfat yogurt,'' then the food must comply with § 101.62(b)(4)(ii) of this chapter, and the name of the food is ''reduced fat yogurt.''

(ii) If the finished food contains at least 0.5 g, but not more than 3.0 g, total fat per RACC, then the name of the food is ''lowfat yogurt.''

(iii) If the finished food contains less than 0.5 g total fat per RACC, the name of the food is ''nonfat yogurt.''

(2) The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in § 101.22 of this chapter.

(3) The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(i) The word ''sweetened'' if a sweetener is added without the addition of characterizing flavor.

(ii) The phrase ''vitamin A'' or ''vitamin A added,'' or ''vitamin D'' or ''vitamin D added,'' as appropriate. The word ''vitamin'' may be abbreviated ''vit.''

(f) *Declaration of ingredients.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

NYA's suggested standard of identity for cultured milk is as follows:

Section 131.112 Cultured Milk/Fermented Milk.

(a) *Description.* Cultured milk or fermented milk is the food produced by culturing one or more of the standard dairy ingredients specified in paragraph (b) of this section with characterizing microbial organisms. One or more of the optional ingredients specified in paragraph (c) of this section may also be added. All ingredients used are safe and suitable. Cultured milk or fermented milk, before the addition of optional ingredients specified in paragraph (c) of this section, contains not less than 8.25 percent milk solids not fat from the standard dairy ingredients specified in paragraph (b) of this section, and has a titratable acidity of not less than 0.5 percent, expressed as lactic acid, before the addition of bulky flavors. Dairy ingredients comprise at least 51 percent of the food's overall ingredients by weight. The food may be homogenized and the ingredients specified in paragraph (b) of this

section shall be pasteurized or ultra-pasteurized prior to the addition of the microbial cultures.

(b) *Standard dairy ingredients.* Cream, milk, partially skimmed milk, skim milk, or the reconstituted versions of any of these standard dairy ingredients may be used. Whey protein concentrate (WPC), minimum protein concentrate 34 percent, may be used if the total quantity of WPC used in this paragraph and paragraph (c) of this section does not result in a quantity of WPC that exceeds 25 percent of the total milk solids not fat. When one or more of the ingredients specified in this paragraph is used, it shall be included in the culturing process.

(c) *Optional ingredients.* (1) Dairy ingredients. Any milk-derived ingredients used for technical or functional purposes.

(2) Aroma- and flavor-producing microbial culture.

(3) Safe and suitable sweeteners.

(4) Flavoring ingredients.

(5) Color additives that do not impart a color simulating that of milkfat or butterfat.

(6) Stabilizers and emulsifiers.

(7) Preservatives.

(8) Vitamins and minerals.

(i) If added, vitamin A shall be present in a minimum quantity of 500 IU per RACC.

(ii) If added, vitamin D shall be present in a minimum quantity of 100 IU per RACC.

(9) Butterfat or milkfat, which may or may not contain color additives, in the form of flakes or granules.

(10) Salt.

(11) Citric acid, in a maximum amount of 0.15 percent by weight of the milk used, or an equivalent amount of sodium citrate, as a flavor precursor.

(12) Any safe and suitable ingredients added for nutritional or functional purposes.

(d) *Methods of analysis.* (1) Milk solids not fat content—Calculated using the following methods from the ''Official Methods of Analysis of the Association of Official Analytical Chemists,'' 15th Ed. (Copies are available from the Association of Official Analytical Chemists, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2417, or available for inspection at the Office of the Federal Register, 800 North Capitol St., NW., suite 700, Washington, DC). Subtract the milkfat content (as determined by the method prescribed in section 16.059 ''Roese-Gottlieb Method (Reference method) (11)—Official Final Action, under the heading ''Fat'') from the total milk solids content (as determined by the method prescribed in section 16.032, ''Method I—Official Final Action,'' under the heading ''Total Solids'').

(2) Titratable acidity—As determined by the method prescribed in section 16.023, ''Acidity (2)—Official Final Action,'' or by an equivalent potentiometric method.

(e) *Nomenclature.* (1) The name of the food is ''cultured milk'' or ''fermented milk,'' except:

(i) If the finished food complies with the requirements of § 101.62(b)(4)(i) of this chapter, and is not ''lowfat fermented milk'' or ''lowfat cultured milk'' or ''nonfat fermented milk'' or ''nonfat cultured milk,'' then the food must comply with § 101.62(b)(4)(ii) of this chapter, and the name of the food is ''reduced fat fermented milk'' or ''reduced fat cultured milk.''

(ii) If the finished food contains at least 0.5 g, but not more than 3.0 g, total fat per RACC, then name of the food is ''lowfat fermented milk'' or ''lowfat cultured milk.''

(iii) If the finished food contains less than 0.5 g total fat per RACC, the name of the food is ''nonfat fermented milk'' or ''nonfat cultured milk.''

(2) The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in § 101.22 of this chapter.

(3) The name of the food shall be accompanied by a declaration such as a traditional name of the food or the generic name of the organisms used, thereby indicating the presence of the characterizing microbial organisms or ingredients, e.g., ''kefir cultured milk,'' ''acidophilus fermented milk,'' or when characterizing ingredients such as those in paragraphs (c)(2), (c)(9), (c)(10), and (c)(11) of this section and lactic acid-producing organisms are used, the food may be named ''cultured buttermilk.''

(4) The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label in letters not less than one-half of the height of the letters used in such name:

(i) The word ''sweetened'' if a sweetener is added without the addition of characterizing flavoring.

(ii) The phrase ''vitamin A'' or ''vitamin A added,'' or ''vitamin D'' or ''vitamin D added,'' or ''vitamin A and D added,'' as appropriate. The word ''vitamin'' may be abbreviated ''vit.''

(5) The parenthetical phrase ''(heat-treated after culturing)'' shall follow the name of the food if the dairy ingredients have been heat-treated after culturing.

(f) *Declaration of ingredients.* Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of parts 101 and 130 of this chapter.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. If you base your comments on scientific evidence or data, please submit copies of the specific information along with your comments. The petition and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Authority

This advance notice of proposed rulemaking is issued under sections 201, 401, 403, 409, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, and 379e), and under the authority of the Commissioner of Food and Drugs, as redelegated to the Director, Center for Food Safety and Applied Nutrition.

Dated: June 3, 2003.

L. Robert Lake,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–16789 Filed 7–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor

ACTION: Notice of final membership list for Negotiated Rulemaking Advisory Committee.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing a final membership list of the Crane and Derrick Negotiated Rulemaking Advisory Committee (C-DAC).

COMMENTS: Written comments on the committee's proceedings may be submitted to the Crane and Derrick Negotiated Rulemaking Advisory Committee, Docket No. S–030, including additional materials and attachments, in any of three ways: *hard copy, facsimile and electronic transmission.*

ADDRESSES: *Mail:* You must submit three copies of your comments on committee proceedings and attachments to the OSHA Docket Office, Docket No. S–030, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m. Note that receipt of comments submitted by mail may be delayed by several weeks.

Facsimile (FAX): If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office, Docket No. S–030, at (202) 693–1648.

Electronic transmission: You may submit comments through the Internet at *http://ecomments.osha.gov.*

Please note that you cannot attach materials, such as studies or journal

articles, to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach the materials to your electronic comments.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the address above. Comments and submissions posted on OSHA's Webpage are available at *www.osha.gov.* Please do not include personal information (such as social security numbers and birth dates) in submissions. Contact the OSHA Docket Office at (202)-693–2350 for information about materials not available through the OSHA Webpage and for assistance in using the Webpage to locate docket submissions.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Bonnie Friedman, OSHA, Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1900. For technical inquiries contact Mr. Michael Buchet, OSHA, Office of Construction Standards and Guidance, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020. For additional copies of this **Federal Register** notice, contact OSHA, Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's web page on the Internet at *http://www.osha.gov.*

The C–DAC Facilitator, Susan Podziba, can be reached at Susan Podziba and Associates, 21 Orchard Road, Brookline, MA 02445; Telephone (617) 738–5320, Fax (617) 738–6911.

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I. Background

On July 16, 2002, OSHA published a **Federal Register** notice of intent to establish a negotiated rulemaking committee for cranes and derricks (volume 67 of the **Federal Register**, page 46612). The notice requested comments on the appropriateness of using negotiated rulemaking to develop a proposed rule for cranes and derricks used in construction and requested nominations for membership on the Committee. In addition, the notice described the negotiated rulemaking process and identified some key issues anticipated to be addressed in the negotiation.

Fifty-five nominations for membership on the Committee and several comments were received during the comment period. There was broad support for using negotiated rulemaking to update the standard and OSHA decided to go forward with the negotiated rulemaking process.

II. Discussion of Comments on the Proposed Membership List

The Agency published a proposed membership list and requested public comment (68 FR 9036, February 27, 2003). In response to the notice of proposed members, OSHA received 29 sets of comments. Of the comments received, 13 supported OSHA's proposed member list and 16 asked for individuals to be added to the list. Below is a discussion of the comments that recommended adding members to the committee.

Three commenters (Exs. 6–1, 7–7 and 7–13) indicated that there should be an additional representative from the mobile crane manufacturing industry. In their view there was an imbalance in the proposed committee list with respect to the number of manufacturing representatives relative to the number of user representatives. The proposed committee included a representative from Manitowoc Cranes, Inc. OSHA agrees with these commenters and has decided to add Bernie McGrew of Link-Belt Construction Equipment Company to the Committee to provide additional technical expertise on the design, manufacturing and testing of mobile cranes.

One industry commenter (Ex. 7–12) suggested that the committee needs a representative from the Department of Defense and in particular the Navy Nuclear Crane Program. The Agency, however, is not aware of aspects of cranes used by the Navy that cannot be addressed by the proposed members of the Committee. Furthermore, no comments were received from the Navy objecting to the proposed membership list.

One commenter (Ex. 7–9) asserted that the proposed committee did not represent hydraulic telescoping boom cranes. However, since Manitowoc owns Grove, a major manufacturer of hydraulic cranes, their member will represent that interest. Also, Link-Belt manufacturers hydraulic cranes, so with the addition of Mr. McGrew, the interests of manufacturers of hydraulic telescoping boom cranes will be represented.

That commenter also asserted that the committee should have a representative of an ''independent'' trainer. The proposed list included David Ritchie of The St. Paul Companies, who has extensive experience as a trainer. The commenter did not explain why the interest of trainers can only be represented by an independent trainer. Accordingly, the Agency concludes that the trainer interest is adequately represented.

One commenter (Ex. 7–4) stated that cranes and derricks are used extensively in marine construction (bridge, dock, outfall, pipeline and dredging work) and that the marine construction environment is very different from a landside environment. He asked that a representative of the marine construction industry be added. He also noted that, ''in lieu of appointing a marine construction representative to the committee, we request that OSHA provide some vehicle to ensure that marine construction interests may offer valuable input to the negotiated rulemaking committee. * * *''

OSHA believes that the marine construction interest can effectively form coalitions with other committee members. In addition, the marine construction interest will have ample opportunities to present information to and work with the C-DAC committee as issues relating to that type of work arise. This type of information can be provided at the public meetings of the full committee and in committee workgroups.

Seven commenters (Exs. 6–7, 6–9, 6–10, 6–11, 6–13, 6–14 and 6–15) objected to the composition of the committee stating that the Specialized Carriers & Rigging Association's (SC&RA) nominee should be added to the committee. The SC&RA is an association with a large, broad-based membership of crane-related businesses. The comments reflect a cross-section of industry support for including the SC&RA nominee, Doug Williams of Buckner Heavylift Cranes. The Agency has decided to add Mr. Williams as a member of the committee.

One commenter (Ex. 6–6) stated that the proposed committee did not have sufficient representation from ''public entities;'' it appears from the context of the comment that the commenter is

referring to industry consensus groups. The Agency believes that the final membership list represents a broad cross-section of the industry. The commenter has not demonstrated why the interests of the individuals who serve on consensus groups, or the consensus groups themselves, would be unable to form coalitions with one or more of the named members.

One commenter (Ex. 6–5) suggested adding a member to the committee to represent manufacturers of specialized safety equipment and devices, such as equipment used to warn those in the vicinity of the crane or to detect hazards. Mr. Means was named to the committee to represent the interests of crane equipment suppliers. The commenter has not indicated why manufacturers of safety devices cannot form a coalition with Mr. Means or others.

A commenter (Ex. 6–4) recommended the addition of a member to represent the outdoor advertising industry. The commenter stated that the location, purpose and dimension of the work environments involved in outdoor advertising create unique challenges in the area of workplace safety. In addition, the commenter noted that work zone control and operations near electric power lines are issues that the outdoor advertising industry has extensive and unique experience with.

OSHA agrees that outdoor advertising is a unique type of construction activity that uses specialized crane equipment. The Agency believes that this interest is significant enough to add a member to the committee and, therefore, is adding Stephen Charman of Viacom Outdoor Group, Inc. to the committee to provide expertise on the use of cranes in the construction of billboards.

The Agency has hired Susan Podziba as Facilitator for the negotiated rulemaking Committee. The primary functions of the Facilitator will be to chair the meetings of the Committee in an impartial manner and assist the members of the Committee in conducting discussions and negotiations.

III. Final Committee Membership List

The final C–DAC membership list is comprised of the 23 individuals listed below:

Manufacturers and Suppliers

Michael Brunet, Manitowoc Cranes, Inc., 2401 S. 30th Street, Manitowoc, WI 54220

Peter Juhren, Morrow Equipment Company, L.L.C., 3218 Pringle Road SE., P.O. Box 3306, Salem, OR 97302

Bernie McGrew, Link-Belt Construction Equipment 2651 Palumbo Drive, P.O. Box 13600, Lexington, KY 40583

Larry Means, Means Engineering & Consulting, P.C., 44 South Carriage Drive, St. Joseph, MO 64506–1233

Lessors/Maintenance

William Smith, Maxim Crane Works 508-C DiGiulian Blvd., Glen Burnie, MD 21061

Users—Employers

Stephen P. Charman, Viacom Outdoor, Inc., 49–29 Maspeth Ave., Maspeth, NY 11378

Joseph Collins, Zachry Construction Corporation, P.O. Box 240130, San Antonio, TX 78224

Brian Murphy, Sundt Corporation, 4101 E Irvington Road, P.O. Box 26685, Tucson, AZ 85726

George R. ''Chip'' Pocock, C.P. Buckner Steel Erection, P.O. Box 598, Graham, NC 27253

Thomas ''Craig'' Steele, Schuck & Sons Construction Company, Inc., 8205 North 67th Avenue, Glendale, AZ 85302

Darlaine Taylor, Century Steel Erectors, Co., LP 210 Washington Avenue, Dravosburg, Pennsylvania 15034

William J. ''Doc'' Weaver, 8065 S. Overhill Circle, Salt Lake City, UT 84121

Robert Weiss, Cranes Inc. and A.J. McNulty & Company, Inc., 53–20 44th Street, Maspeth NY 11378

Doug Williams, Buckner Heavylift Cranes, P.O. Box 598, Graham, NC 27253

Stephen Wiltshire, Turner Construction Company, 6108 Waterman Drive, Fredericksburg, VA 22407

Users—Labor Organizations

Frank Migliaccio, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, 1750 New York Ave., NW., Suite 400, Washington, DC 20006

Dale Shoemaker, Carpenters International Training Center, 6801 Placid Street, Las Vegas, NV 89119

Operators—Labor Organizations

Stephen Brown, International Union of Operating Engineers, 1125 17th Street, NW., Washington, DC 20036

Emmett Russell, International Union of Operating Engineers 1125 17th Street, NW., Washington, DC 20036

Government/Public Entities

Noah Connell, U.S. Department of Labor/OSHA, 200 Constitution Ave., NW., Room N–3468, Washington, DC 20210

Training and Operator Testing

David Ritchie, The St. Paul Companies, P.O. Box 1419, Bastrop, TX 78602

Power Line Owners

Michael Hyland, American Public Power Association, 2301 M Street, NW., Washington, DC 20037

Insurance

Charles Yorio, Acordia, Two Gateway Center, Suite 1900, 603 Stanwix Street, Pittsburgh, PA 15222

IV. Procedure for Adding and Replacing Members

A. Additional Members

During the course of the Committee's negotiations, an unanticipated issue significantly affecting one or more unanticipated, unrepresented interests may arise. The Committee may decide that it is necessary for that issue to be addressed in the proposed rule. If so, the Agency will publish in the **Federal Register** a request for additional nominations to represent such interests. The Secretary or her designee may then select one or more additional representatives, who will be added as Committee members. The additional members will not be entitled to revisit any issue that has already been negotiated, unless the Committee agrees by consensus to do so.

B. Replacement Members

In the event an appointed member becomes unavailable or otherwise unable to serve, the Secretary or her designee will select a replacement member to represent the interest the original member had represented.

V. Anticipated Key Issues for Negotiation

OSHA anticipates that key issues to be addressed as part of these negotiations will include:

1. The identification/description of what constitutes ''cranes and derricks'' for purposes of determining the equipment that will be covered by the proposed rule.

2. Qualifications of individuals who operate, maintain, repair, assemble, and disassemble cranes and derricks.

3. Work zone control.

4. Crane operations near electric power lines.

5. Qualifications of signal-persons and communication systems and requirements.

6. Load capacity and control procedures.

7. Wire rope criteria.

8. Crane inspection/certification records.

9. Rigging procedures.
10. Requirements for fail-safe, warning, and other safety-related devices/technologies.
11. Verification criteria for the structural adequacy of crane components.
12. Stability testing requirements.
13. Blind pick procedures.
14. Hydraulic cranes.

Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, pursuant to the Negotiated Rulemaking Act of 1990, (5 U.S.C. 561 *et seq.*), the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, this 9th day of June, 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–16870 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–26–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–030]

RIN 1218–AC01

Safety Standards for Cranes and Derricks

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of first meeting of Negotiated Rulemaking Committee.

SUMMARY: The Occupational Safety and Health Administration (OSHA) announces the first meeting of the Crane and Derrick Negotiated Rulemaking Advisory Committee (C–DAC). Members will be sworn in; the committee will be charged with its duties and will address certain procedural matters and substantive issues. The meeting will be open to the public.

DATES: The meeting will be on July 30, 31, and August 1, 2003. It will begin each day at 8:30 a.m.

ADDRESSES: The meeting will be held at The U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 in conference room N3437 A, B and C.

Written comments to the committee may be submitted in any of three ways: by mail, by fax, or by email. Please include ''Docket No. S–030'' on all submissions.

By mail, the address is: OSHA Docket Office, Docket No. S–030, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210, telephone (202) 693–2350. Note that receipt of comments submitted by mail may be delayed by several weeks.

By fax, written comments that are 10 pages or fewer may be transmitted to the OSHA Docket Office at telephone number (202) 693–1648.

Electronically, comments may be submitted through OSHA's Webpage at *http://ecomments.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, clearly identify your electronic comments by name, date, subject, and Docket Number, so that we can attach the materials to your electronic comments.

FOR FURTHER INFORMATION CONTACT: Michael Buchet, Office of Construction Standards and Guidance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–2345.

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I. Background
II. Agenda
III. Anticipated Key Issues for Negotiation
IV. Public Participation
V. Supplementary Information
V. Authority

I. Background

On July 16, 2002, OSHA published a notice of intent to establish a negotiated rulemaking committee (Volume 67 of the **Federal Register**, page 46612). The notice requested nominations for membership on the C–DAC and comments on the appropriateness of using negotiated rulemaking to develop a proposed rule for cranes and derricks used in construction. In addition, the notice described the negotiated rulemaking process and identified some key issues anticipated to be addressed in the negotiation.

Fifty-five nominations for membership on the Committee and several comments were received during the comment period. There was broad support for using negotiated rulemaking to update the standard and OSHA decided to go forward with the negotiated rulemaking process. On June 12, 2003 the Department of Labor published a notice establishing the Committee (Volume 68 of the **Federal Register**, page 35172).

II. Agenda

Following registration, assembly and a welcome by the Agency, the Facilitator will offer a brief overview of negotiated rulemaking and then address the matters that must be resolved by the Committee at its first meeting, including adoption of ground rules. These are the procedural rules that the Committee will use for conducting the meetings. In addition there will be discussion of a tentative list of C–DAC workgroups.

The Facilitator will initiate discussions on identifying the substantive issues to be addressed by C–DAC. OSHA requests that committee members and all interested parties bring their calendars to facilitate the development of a tentative schedule of committee and workgroup meetings.

III. Anticipated Key Issues for Negotiation

OSHA anticipates that key issues to be addressed as part of these negotiations will include:

1. The identification/description of what constitutes ''cranes and derricks'' for purposes of determining the equipment that will be covered by the proposed rule.
2. Qualifications of individuals who operate, maintain, repair, assemble, and disassemble cranes and derricks.
3. Work zone control.
4. Crane operations near electric power lines.
5. Qualifications of signal-persons and communication systems and requirements.
6. Load capacity and control procedures.
7. Wire rope criteria.
8. Crane inspection/certification records.
9. Rigging procedures.
10. Requirements for fail-safe, warning, and other safety-related devices/technologies.
11. Verification criteria for the structural adequacy of crane components.
12. Stability testing requirements.
13. Blind pick procedures.

IV. Public Participation

All interested parties are invited to attend this public meeting at the time and place indicated above. No advanced

registration is required. Seating will be available to the public on a first-come, first-served basis. Individuals with disabilities wishing to attend should contact Luz DelaCruz by Telephone at 202–693–2020 or by Fax at 202–693–1689 to obtain appropriate accommodations no later than Tuesday, July 22, 2003. The C–DAC meeting is expected to last two and a half days.

In addition, members of the general public may request an opportunity to make oral presentations to the Committee. The Facilitator has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants. Questions, answers and a less formal exchange is encouraged in the workgroup sessions.

The procedural requirements in Part 1912 of Title 29 of the Code of Federal Regulations will apply generally to C–DAC meetings. The reporting requirements of § 1912.33 have been changed pursuant to § 1912.42 to help meet the special needs of negotiated rulemaking committees. Specifically, § 1912.33 requires that verbatim transcripts be kept of all advisory committee meetings. Producing a coherent transcript requires a certain degree of formality. The Assistant Secretary therefore has determined pursuant to § 1912.42 that such formality might interfere with the free exchange of information and ideas during the negotiations, and that the OSH Act would be better served by simply requiring detailed minutes of the proceedings without a formal transcript.

Minutes of the meetings and materials prepared for the Committee will be available for public inspection at the OSHA Docket Office, N–2625, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 693–2350.

The Facilitator, Susan Podziba, can be reached at Susan Podziba and Associates, 21 Orchard Road, Brookline, MA 02445; Telephone (617) 738–5320, Fax (617) 738–6911.

VI. Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, (5 U.S.C. 561 *et seq.*), the Federal Advisory Committee Act (5 U.S.C. Appendix 2), the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, this 27 day of June, 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–16871 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 75, and 90

RIN 1219–AB14

Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the comment period for Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust (Plan Verification), published in the **Federal Register** on March 6, 2003 as a proposed rule. The comment period was scheduled to close on July 3, 2003, but will now remain open until further notice is published in the **Federal Register**.

MSHA has decided to extend the comment period in order to obtain further information on Personal Dust Monitors (PDMs), a new technology which is currently being tested by the National Institute for Occupational Safety and Health (NIOSH).

All comments received will be entered into the rulemaking.

DATES: The rulemaking record for the proposed rule published on March 6, 2003, and for which the comment period was extended on May 29, 2003, will remain open until further notice in the **Federal Register**.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send us your comments. Clearly identify them as comments and send them (1) by mail to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson, Blvd., Room 2313, Arlington, Virginia 22209–3939; by fax to (202) 693–9441; or (3) electronic mail to: *comments@msha.gov*.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; e-mail: *nichols-marvin@msha.gov*.

You can request a copy of this extension notice in an alternate format, such as a large print version, an electronic file or a file on a disk. This extension notice is available on MSHA's Internet site, *http://www.msha.gov*, at the ''Statutory and Regulatory Information'' icon.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

On July 7, 2000, the Mine Safety and Health Administration (MSHA) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust (Plan Verification) (65 FR 42122). A notice of public hearing and close of record was also published in the **Federal Register** (65 FR 41286) on July 7, 2000. During August 2000, three public hearings were conducted in Morgantown, West Virginia; Prestonsburg, Kentucky; and Salt Lake City, Utah. Transcripts of those proceedings were made available to the public. In response to requests from commenters, the public comment period was extend to September 8, 2000 (65 FR 29215).

On March 6, 2003, (68 FR 10784), in response to commenters to the 2000 proposed rule, MSHA published a second proposed rule in the **Federal Register**. During May 2003, the agency held six public hearings in Washington, Pennsylvania; Charleston, West Virginia; Evansville, Indiana; Lexington, Kentucky; Birmingham, Alabama; and Grand Junction, Colorado. The hearings were attended by over 500 members of the public. In response to requests from the mining community the Agency extended the post-hearing comment period from June 4, 2003 to July 3, 2003 (68 FR 32005, May 29, 2003). This notice extends the public comment period from July 3, 2003 until further notice is published in the **Federal Register**.

II. Reasons for Extension of Comment Period

The Agency made the decision to extend the comment period on the proposed rule after careful consideration of comments during the May 2003 public hearings concerning the preliminary success of in-mine tests on a prototype of personal dust monitors (PDMs).

The Comment period will remain open during which time:

• The in-mine testing of the pre-production prototype PDMs at mines in Pennsylvania, West Virginia, Alabama, and Utah is completed;

• NIOSH and MSHA commit $150,000 each for further testing contingent upon completion and positive assessment of the in-mine testing; and

• Information is obtained to assist in controlling and monitoring respirable coal mine dust and preventing Black Lung disease.

For all the reasons stated herein, the comment period on the proposed rule is hereby extended until further notice is published in the **Federal Register**.

A separate notice reopening the rulemaking record for the proposed rule ''Determination of Concentration of Respirable Coal Mine Dust,'' (68 FR 10940, 68 FR 32005) will be published in the **Federal Register** shortly.

Dated: June 30, 2003.

John R. Caylor,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 03–16979 Filed 7–1–03; 11:28 am]

BILLING CODE 4510–43–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL–7522–4]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to amend the final Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996, to adjust EPA's civil monetary penalties (''CMPs'') for inflation on a periodic basis. The Agency is required to review its penalties at least once every four years and to adjust them as necessary for inflation according to a formula specified in the statute. A complete version of Table 1 from the proposed regulatory text, which lists all of the EPA's civil monetary penalty authorities, appears near the end of this document.

DATES: Written comments should be submitted on or before August 4, 2003.

ADDRESSES: Mail written comments to the Docket Office, Enforcement & Compliance Docket and Information Center (2201AT), Docket Number EC–2001–008, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue, NW., Room B133, Washington, DC 20460 (in triplicate, if possible). Please use a font size no smaller than 12. Written comments may be delivered in person to: U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Comments may also be submitted electronically to *docket.oeca@epa.gov* or faxed to (202) 566–1511. Attach electronic comments as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number, EC–2001–008 on your document. Public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Persons interested in reviewing this docket may do so by calling (202) 566–1512.

FOR FURTHER INFORMATION CONTACT: David Abdalla, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2413.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 note, (''DCIA''), each federal agency is required to issue regulations adjusting for inflation the maximum civil monetary penalties that can be imposed pursuant to such agency's statutes. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to further the policy goals of the laws. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. The EPA's initial adjustment to each CMP was published in the **Federal Register** on December 31, 1996, at 61 FR 69360 and became effective on January 30, 1997.

The proposed rule adjusts the amount for each type of CMP that EPA has jurisdiction to impose in accordance with these statutory requirements. It does so by revising the table contained in 40 CFR 19.4. The table identifies the statutes that provide EPA with CMP authority and sets out the inflation-adjusted maximum penalty that EPA may impose pursuant to each statutory provision. The proposed rule also revises the effective date provisions of 40 CFR 19.2 to make the penalty amounts set forth in 40 CFR 19.4 apply to all applicable violations that occur after the effective date of the final rule.

The DCIA requires that the adjustment reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the adjustment and June of the calendar year in which the amount was last set or adjusted. The DCIA defines the Consumer Price Index as the Consumer Price Index for all urban consumers published by the Department of Labor (''CPI–U''). As the initial adjustment was made and published on December 31, 1996, the inflation adjustment for the CMPs set forth in the proposed rule was calculated by comparing the CPI–U for June 1996 (156.7) with the CPI-U for June 2002 (179.9), resulting in an inflation adjustment of 14.8 percent. In addition, the DCIA's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000.

The amount of each CMP was multiplied by 14.8 percent (the inflation adjustment) and the resulting increase amount was rounded up or down according to the rounding requirements of the statute. The table below shows the inflation-adjusted CMPs and includes only the CMPs as of the effective date of the final rule. EPA intends to readjust these amounts in the year 2007 and every four years thereafter, assuming there are no further changes to the mandate imposed by the DCIA.

On June 18, 2002, the EPA published a direct final rule and a parallel proposed rule in the **Federal Register** (67 FR 41343). The direct final rule would have amended the Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the DCIA, to adjust EPA's civil monetary penalties for inflation. EPA stated in the direct final rule that if we received adverse comment by July 18, 2002, EPA would publish a timely notice of withdrawal on or before the August 19, 2002 effective date, and then address that comment in a subsequent final action based on the parallel proposal published at (67 FR 41363). EPA

subsequently received one adverse comment on the direct final rule from the Government Accounting Office (''GAO''), which stated that EPA had misinterpreted the rounding formula provided in the DCIA. Accordingly, EPA withdrew the direct final rule on August 19, 2002 (67 FR 53743).

The formula for the amount of the penalty adjustment is prescribed by Congress in the DCIA and these changes are not subject to the exercise of discretion by EPA. However the rounding requirement of the statute is subject to different interpretations. Some agencies rounded the increase based on the amount of the current penalty before adjustment, while other agencies have rounded the increase based on the amount of the increase resulting from the CPI percentage calculation. Still other agencies first added the CPI increase to the amount of the current penalty and then rounded the total based on the amount of the increased penalty. The penalties in EPA's direct final rule were rounded based on the amount of the increase resulting from the CPI percentage increase because this approach appears to achieve the intent of the DCIA by steadily tracking the CPI over time. However, the GAO's adverse comment asserts that a strict reading of the DCIA requires rounding the CPI increase based on the amount of the current penalty before adjustment. EPA proposes to adopt GAO's interpretation of the DCIA rounding rules and round the CPI increases based on the amount of the current penalty before adjustment. EPA intends to use this formula for calculating future adjustments to the CMPs and will not provide additional comment periods at the time future adjustments are made.

Administrative Requirements

Although EPA is publishing this rule with proposal, we view this as a noncontroversial amendment and anticipate no further adverse comment. This rule incorporates requirements specifically set forth in the DCIA requiring EPA to issue a regulation implementing inflation adjustments for all its civil penalty provisions. These technical changes, required by law, do not substantively alter the existing regulatory framework or in any way affect the terms under which civil penalties are assessed by EPA. In addition, EPA has made minor conforming changes to the regulations to reflect the effective date of the new penalties prescribed by Congress. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Statutory and Executive Order Review

Executive Order 12866: Regulatory Planning and Review

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

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

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

(3) Materially alter the budgetary impact of 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.

It has been determined that the proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Burden means the total time, effort, financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business as defined in the Small Business Administration regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA is required by the DCIA to adjust civil monetary penalties for inflation. The formula for the amount of the penalty adjustment is prescribed by Congress and is not subject to the exercise of discretion by EPA. EPA's action implements this statutory mandate and does not substantively alter the existing regulatory framework. This rule does not affect mechanisms already in place, including statutory provisions and EPA policies, that address the special circumstances of small entities when assessing penalties in enforcement actions.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Small entities may be affected by this rule only if the federal government finds them in violation and seeks monetary penalties. EPA's media penalty policies generally take into account an entity's ''ability to pay'' in determining the amount of a penalty. Additionally, the final amount of any civil penalty assessed against a violator remains

committed to the discretion of the Federal Judge or Administrative Law Judge hearing a particular case. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because the rule implements mandate(s) specifically and explicitly set forth by the Congress without the exercise of any policy discretion by EPA. Thus, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

Executive Order 13132: Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' As the proposed 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, Executive Order 13175 does not apply to this rule.

Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Because this action does not involve technical standards, EPA did not consider the use of any voluntary consensus standards under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

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

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.

National Technology Transfer Advancement Act

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

Because this action does not involve technical standards, EPA did not consider the use of any voluntary consensus standards under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note).

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

Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Congressional Review Act

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

List of Subjects

40 CFR Part 19

Environmental protection, Administrative practice and procedure, Penalties.

40 CFR Part 27

Administrative practice and procedure, Assessments, Claims, Fraud, Penalties.

Dated: June 27, 2003.

Christine Todd Whitman,

Administrator.

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

1. Revise part 19 to read as follows:

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.

19.1 Applicability.
19.2 Effective Date.
19.3 [Reserved].
19.4 Penalty Adjustment and Table.

Authority: Pub. L. 101–410, 28 U.S.C. 2461 note; Pub. L. 104–134, 31 U.S.C. 3701 note.

§ 19.1 Applicability.

This part applies to each statutory provision under the laws administered by the Environmental Protection Agency concerning the maximum civil monetary penalty which may be assessed in either civil judicial or administrative proceedings.

§ 19.2 Effective Date.

The increased penalty amounts set forth in this rule apply to all violations under the applicable statutes and regulations which occur after July 3, 2003. [The regulatory penalty provisions of this part effective on January 30, 1997 remain in effect for any violation of law occurring between January 30, 1997 and July 3, 2003.

§ 19.3 [Reserved].

§ 19.4 Penalty Adjustment and Table.

The adjusted statutory penalty provisions and their maximum applicable amounts are set out in Table 1. The last column in the table provides the newly effective maximum penalty amounts.

TABLE 1 OF § 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount in dollars
7 U.S.C. 1361.(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC..	$6,500
7 U.S.C. 1361.(a)(2)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS.	$650/$1,100
15 U.S.C. 2615(a)	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY.	$32,500
15 U.S.C. 2647(a)	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY.	$6,500
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.	$6,500
31 U.S.C. 3802(a)(2)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	$6,500
33 U.S.C. 1319(d)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY.	$32,500
33 U.S.C. 1319(g)(2)(A)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	$11,000/$32,500
33 U.S.C. 1319(g)(2)(B)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION and MAXIMUM.	$11,000/$157,500
33 U.S.C. 1321(b)(6)(B)(I)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	$11,000/$32,500
33 U.S.C. 1321(b)(6)(B)(ii)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	$11,000/$157,500
33 U.S.C. 1321(b)(7)(A)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	$32,500 or $1,100 per barrel or unit.
33 U.S.C. 1321(b)(7)(B)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c)&(e)(1)(B).	$32,500
33 U.S.C. 1321(b)(7)(C)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j).	$32,500

TABLE 1 OF § 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount in dollars
33 U.S.C. 1321(b)(7)(D)	CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	$120,000 or $3,300 per barrel or unit.
33 U.S.C. 1414b(d)	MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 104b(d).	$760
33 U.S.C. 1415(a)	MARINE PROTECTION RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.	$60,000/$157,500
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b).	$32,500
42 U.S.C. 300g–3(c)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c).	$32,500
42 U.S.C. 300g–3(g)(3)(A)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(g)(3)(a).	$32,500
42 U.S.C. 300g–3(g)(3)(B)	SAFE DRINKING WATER ACT/MAXIMUM ADMINISTRATIVE PENALTIES PER SEC 1414(g)(3)(B).	$6,000/$30,000
42 U.S.C. 300g–3(g)(3)(C)	SAFE DRINKING WATER ACT/THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC 1414(g)(3)(C).	$30,000
42 U.S.C. 300h–2(b)(1)	SDWA/CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).	$32,500
42 U.S.C. 300h–2(c)(1)	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	$11,000/$157,500
42 U.S.C.300h–2(c)(2)	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	$6,500/$157,500
42 U.S.C. 300h–3(c)(1)	SDWA/VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	$6,500
42 U.S.C. 300h–3(c)(2)	SDWA/WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	$11,000
42 U.S.C. 300i(b)	SDWA/FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER.	$15,000
42 U.S.C. 300i–1(c)	SDWA/ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	$100,000/$1,000,000
42 U.S.C. 300j(e)(2)	SDWA/FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1).	$2,750
42 U.S.C. 300j–4(c)	SDWA/REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b).	$32,500
42 U.S.C. 300j–6(b)(2)	SDWA/FAILURE TO COMPLY WITH ADMIN. ORDER ISSUED TO FEDERAL FACILITY.	$30,000
42 U.S.C. 300j–23(d)	SDWA/VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE.	$6,500/$60,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992, SEC 1018—CIVIL PENALTY.	$11,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972—CIVIL PENALTY	$11,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	$32,500
42 U.S.C. 6928(c)	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	$32,500
42 U.S.C. 6928(g)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C.	$32,500
42 U.S.C. 6928(h)(2)	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER.	$32,500
42 U.S.C. 6934(e)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER.	$6,500
42 U.S.C. 6973(b)	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER.	$6,500
42 U.S.C. 6991e(a)(3)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER.	$32,500
42 U.S.C. 6991e(d)(1)	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR FOR SUBMITTING FALSE INFORMATION.	$11,000
42 U.S.C. 6991e(d)(2)	RCRA/VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS.	$11,000
42 U.S.C. 14304(a)(1)	BATTERY ACT VIOLATIONS	$11,000
42 U.S.C. 14304(g)	BATTERY ACT/VIOLATIONS OF CORRECTIVE ACTION ORDERS.	$11,000
42 U.S.C. 7413(b)	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	$32,500

TABLE 1 OF § 19.4.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount in dollars
42 U.S.C. 7413(d)(1)	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—ADMINISTRATIVE PENALTIES PER VIOLATION & MAX.	$32,500/$245,000
42 U.S.C. 7413(d)(3)	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	$6,500
42 U.S.C. 7524(a)	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	$2,750
42 U.S.C. 7524(a)	VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1), (2), (4), & (5) BY ANYONE.	$32,500
42 U.S.C. 7524(c)	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	$245,000
42 U.S.C. 7545(d)	VIOLATIONS OF FUELS REGULATIONS	$32,500
42 U.S.C. 9604(e)(5)(B)	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	$32,500
42 U.S.C. 9606(b)(1)	SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	$32,500
42 U.S.C. 9609(a)&(b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.	$32,500
42 U.S.C. 9609(b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT.	$92,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.	$32,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	$92,500
42 U.S.C. 11045(a)&(b)(1), (2) & (3)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	$32,500
42 U.S.C. 11045(b)(2) & (3)	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	$92,500
42 U.S.C. 11045(c)(1)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	$32,500
42 U.S.C. 11045(c)(2)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	$11,000
42 U.S.C. 11045(d)(1)	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	$32,500 per barrel or unit.

PART 27—[AMENDED]

2. The authority citation for Part 27 continues to read as follows:

Authority: 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note; Pub L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

3. Section 27.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 27.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $6,500 [1] for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $6,500 [2] for each such statement.

* * * * *

[FR Doc. 03–16925 Filed 7–2–03; 8:45 am]

BILLING CODE 6560–50–P

[1] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321). [The regulatory penalty provisions of this part effective on January 30, 1997 remain in effect for any violation of law occurring between January 30, 1997 and July 3, 2003.

[2] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7522–6]

Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a correction to the mobile source provisions in the EPA's regional haze rule. This correction is consistent with recommendations of the Western Regional Air Partnership (WRAP). The amendments to the rule are intended to address an emissions projection scenario for mobile sources which was not addressed when EPA published the regional haze rule in 1999.

DATES: Comments on this proposal must be received by August 4, 2003.

In the ''Final Rules'' section of today's **Federal Register**, we are publishing a direct final rule that matches the substance of this proposed rule. If the Agency receives adverse comment or a request for public hearing by August 4, 2003, we will withdraw the direct final rule by publishing a timely withdrawal notice in the **Federal Register**. If the Agency receives no adverse comments to this proposed rule, the direct final rule is effective September 2, 2003.

ADDRESSES: All comments should be submitted to Docket No. OAR–2002–0076. When mailing documents, comments, or requests to the EPA Docket Center through the U.S. Postal Service, please use the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room B108; Mail Code: 6102T, Washington, DC 20460. To mail comments or documents through a courier service, the mailing address is: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108; Mail Code: 6102T, Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m., excluding legal holidays. Comments can be submitted to the address above, by fax (202) 566–1741, or by e-mail to *A-and-R-Docket@epa.gov.* The voice telephone number is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: If you would like further information about this proposed rule or to request a public hearing, contact Kathy Kaufman, Integrated Policies and Strategies Group, (919) 541–0102 or by e-mail *kaufman.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are nine States in the Western United States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah and Wyoming) and Indian Tribes within that same geographic area. This proposed action, and an earlier action taken by EPA in 1999, provides these States and Tribes with an optional program to protect visibility in federally protected scenic areas. The portion of the program addressed by this proposed rule is a program for tracking of mobile source emissions under the 1999 rule.

Docket. The EPA has established an official public docket for this action under Docket No. OAR–2002–0076. 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 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 Air Docket in the EPA Docket Center, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying.

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Outline. The contents of today's preamble are listed in the following outline.

I. Background
  A. What is the regional haze rule?
  B. What are the special provisions for Western States and eligible Indian Tribes in 40 CFR 51.309 of the regional haze rule?
II. Changes to the Mobile Source Provisions of Section 309
  A. Why are we changing the mobile source provisions of 40 CFR 51.309?
  B. What are the specific changes to the mobile source provisions of 40 CFR 51.309?
III. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
  I. National Technology Transfer Advancement Act
  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
IV. Statutory Provisions and Legal Authority

I. Background

A. What Is the Regional Haze Rule?

Section 169(A) of the Clean Air Act (CAA) establishes a national goal for protecting visibility in federally-protected scenic areas. These ''Class I'' areas include national parks and wilderness areas. The national visibility goal is to remedy existing impairment and prevent future impairment in these Class I areas, consistent with the requirements of sections 169A and 169B of the CAA.

Regional haze is a type of visibility impairment caused by air pollutants emitted by numerous sources across a broad region. The EPA uses the term regional haze to distinguish this type of visibility problem from those which are more local in nature. In 1999, EPA issued a regional haze rule requiring States to develop implementation plans that will make ''reasonable progress'' toward the national visibility goal (64 FR 35714, July 1, 1999). The first State plans for regional haze are due between 2003 and 2008. The regional haze rule provisions appear at 40 CFR 51.308 and 40 CFR 51.309.

B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?

The regional haze rule at 40 CFR 51.308 sets forth the requirements for State implementation plans (SIPs) under the regional haze program. The rule requires State plans to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine Western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the Grand Canyon Visibility Transport Commission (GCVTC) during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region. The regulatory provisions at 40 CFR 51.309 are based on the final report issued by the GCVTC in 1996,[1] which included a number of recommended emissions reductions strategies designed to improve visibility in the 16 Class I areas on the Colorado Plateau.

In developing the regional haze rule, EPA received a number of comments on the proposed rule encouraging the Agency to recognize explicitly the work of the GCVTC. In addition, in June 1998, Governor Leavitt of Utah provided comments to EPA on behalf of the Western Governors Association (WGA), further emphasizing the commitment of Western States to implementing the GCVTC recommendations. The WGA's comments also suggested the translation of the GCVTC's recommendations into specific regulatory language. The EPA issued a Notice of Availability during the fall of 1998 requesting further comment on the WGA's proposal and a draft set of regulatory language based upon the WGA's recommendations. Based on the comments received on this **Federal Register** action, EPA developed the provisions set forth in 40 CFR 51.309 that allow the nine Transport Region States and eligible Tribes within that geographic area to implement many of the GCVTC recommendations within the framework of the national regional haze rule.

The provisions in 40 CFR 51.309 comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within this geographic region. The strategy addresses the time period between the year 2003, when the implementation plans are due,[2] and the year 2018. The provisions address emissions from stationary sources, mobile sources, and area sources such as emissions from fires and windblown dust.

II. Changes to the Mobile Source Provisions of Section 309

A. Why Are We Changing the Mobile Source Provisions of 40 CFR 51.309?

1. What Is the Basis for the Old Provisions?

The GCVTC determined that mobile source emissions need to be an essential part of a strategy to reduce haze on the Colorado Plateau. Therefore, one element of the GCVTC's strategy, as reflected in 40 CFR 51.309(d)(5), was to address mobile source emissions. Section 309 also requires States to establish a mobile source emissions budget for each area that significantly contributes to visibility impairment in any of the 16 Class I areas covered by this section of the regulations. At the time the GCVTC made its recommendations (in 1996), mobile source emissions were projected to be lowest in 2005, and to subsequently rise over the course of the first regional haze planning period (*i.e.*, until 2018). Accordingly, section 309 required mobile source emissions budgets to be set using the lowest projected level as a planning objective and performance indicator for each area.

2. What Is the Basis for the New Provisions?

Since the GCVTC made its recommendations, new developments have caused mobile source emissions projections to change significantly. Over the past few years, we have promulgated a series of new emissions standards for several different engine types, as well as new standards for diesel fuel content.[3] As a result of these new standards, the WRAP, using EPA's latest models,[4] now projects a significant decline in mobile source emissions throughout the region during the 2003–2018 time period covered by the section 309 plans, particularly from onroad mobile sources. Rather than emissions being lowest in 2005, and subsequently rising, mobile source emissions for all pollutants except sulfur dioxide (SO2) are expected to decline continuously over the course of the first regional haze planning period.

The projected trends for mobile source emissions of SO_2 differ from those of other pollutants. Emission reductions from pollutants such as nitrogen oxides (NO_X) and particulate matter (PM) are dependent on technological changes to the onroad fleet and to nonroad engines which are implemented gradually. In contrast, SO_2 emissions reductions are immediately realized when the sulfur content of the fuel changes, because emissions from both new and existing engines immediately drop sharply. We have already published stringent fuel sulfur limits for onroad engines and have proposed stringent fuel sulfur limits for nonroad engines.[5] These Federal fuel sulfur regulations, fully implemented, would together result in a substantial reduction in SO_2 emissions over the 2003—2018 planning period.

B. What Are the Specific Changes to the Mobile Source Provisions of 40 CFR 51.309?

These revisions would change § 51.309(d)(5)(i) to eliminate the requirement for setting mobile source emissions budgets using the lowest projected level as a planning objective and performance indicator for each area. Instead, the new § 51.309(d)(5)(i) would substitute, as the new planning objective and performance indicator, a requirement for statewide inventories to show a continuous decline in emissions of each pollutant of concern over the planning period. Should mobile source emissions not decline as expected, States would have to revise their SIPs to include any feasible additional strategies. This new requirement conforms to trends that are currently projected.

In addition, in light of the continuous decline in mobile source emissions expected over the entire region, these revisions also eliminate the unneeded requirement in § 51.309(5)(ii) and (iii) to determine whether mobile sources emissions constitute a significant contributor to haze in a given State. The revisions retain the requirements for statewide inventories and performance demonstrations.

Finally, the revisions contain a backstop provision, requested by the WRAP, to address any potential concerns regarding SO_2 from nonroad

[1] *Recommendations for Improving Western Vistas.* GCVTC, June 10, 1996.

[2] Indian Tribes are given the flexibility under EPA regulations to submit implementation plans and opt into the program after the 2003 deadline.

[3] *See* 62 FR 25355, (May 8, 1997); 63 FR 18978, (April 16, 1998); 63 FR 56968, (October 23, 1998); 64 FR 73300, (December 29, 1999); 65 FR 59895, (October 6, 2000); 66 FR 5001, (January 18, 2001); 67 FR 68241, (November 8, 2002); and 68 FR 9745, (February 28, 2003).

[4] MOBILE6 and MOBILE6.2 for on-highway vehicles and the NONROAD model for nonroad vehicles.

[5] *See http://www.epa.gov/nonroad/* [placeholder for nonroad diesel proposal, signed 4/15/03].

sources in the event that recently proposed Federal standards, referenced above, are not finalized. The backstop provision, contained in the new §51.309(d)(5)(i)(B), requires States to assess the need for any long-term strategies to address SO_2 from nonroad mobile sources by no later than December 31, 2008. In determining whether to revise their SIPs to address SO_2 from mobile sources, States may consider the emissions reductions achieved—or anticipated—by any Federal standards that are in place addressing fuel sulfur content for nonroad engines.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule is not a significant regulatory action.

B. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The OMB has approved the information collection requirements contained in the final Regional Haze regulations (64 FR 35714, July 1, 1999) and has assigned OMB control number 2060–0421 (EPA ICR No. 1813.04).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rulemaking on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA Web site at *http://www.sba.gov/size/indextableofsize.html);* (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would eliminate certain comprehensive requirements to address mobile source emissions that EPA now considers to be unnecessary. Specifically, as discussed above, this proposed rule would eliminate the requirements in § 51.309(5)(ii) and (iii) to determine whether mobile sources emissions constitute a significant contributor to haze in a given State, and for those States with areas that meet this significance criterion, to establish mobile source emissions budgets. This proposed rule would require emissions reductions consistent with the downward trend in mobile source emission inventories that is currently projected, based on regulations that have already been promulgated. We have therefore concluded that this proposed rule would relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(5)(A)(i)(I). A ''Federal private sector mandate''

includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

Because the entire program under 40 CFR 51.309, including today's amendments, is an option that each of the States may choose to exercise, these revisions to section 309 do not establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. The program is not required and, thus is clearly not a ''mandate.'' Moreover, as explained above, today's rule eliminates certain requirements and will overall reduce any regulatory burdens. Accordingly, this rule will not result in expenditures to State, local, and tribal governments, in the aggregate, or the private sector, of $100 million or more in any given year. Thus EPA is not obligated, under section 203 of UMRA, to develop a small government agency plan.

We believe that this rulemaking is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule (64 FR 35761, July 1, 1999). However, today's direct final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local or Tribal governments or the private sector. In addition, the program contained in 40 CFR 51.309, including today's revisions, is an optional program.

E. Executive Order 13132: Federalism

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

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing a regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described above, this proposed rule contains minor revisions to section 309 of the regional haze rule which would reduce any regulatory burden on the States. In addition, section 309 is an optional program for States. The minor revisions to section 309, accordingly, would not directly impose significant new requirements on State and local governments. Moreover, even if today's proposed revisions did have federalism implications, these proposed revisions would not impose substantial direct compliance costs on State or local governments, nor would they preempt State law. Thus, Executive Order 13132 does not apply to this proposed rule.

Consistent with EPA policy, we nonetheless did consult with representatives of State and local governments in developing this proposed rule. This rule directly implements specific recommendations from the WRAP, which includes representatives from all the affected States.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on today's rule from State and local officials.

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

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

This proposed rule would eliminate certain requirements and will overall reduce any regulatory burden on the Tribes. Moreover, the section 309 program is an optional program for Tribes within the same geographic region as the WRAP states. Accordingly, this proposed rule would not have tribal implications. In addition, this proposed rule would directly implement specific recommendations from the WRAP, which includes representatives of Tribal governments. Thus, although this proposed rule would not have tribal implications, representatives of Tribal governments have had the opportunity to provide input into development of the recommendations forming its basis.

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

Executive Order 13045: ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed rule is not subject to Executive Order 13211, ''Actions that

Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. We welcome comments on this aspect of the proposed rulemaking and, specifically, invite the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The requirements of Executive Order 12898 have been previously addressed to the extent practicable in the Regulatory Impact Analysis (RIA) for the regional haze rule (cited above), particularly in chapters 2 and 9 of the RIA. This proposed rule makes no changes that would have a disproportionately high and adverse human health or environmental effect on minorities and low-income populations.

IV. Statutory Provisions and Legal Authority

Statutory authority for today's proposed rule comes from sections 169(a) and 169(b) of the CAA (42 U.S.C. 7545(c) and (k)). These sections require EPA to issue regulations that will require States to revise their SIPs to ensure that reasonable progress is made toward the national visibility goals specified in section 169(A).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 27, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 51 of title 40, Chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7492, 7601, and 7602.

Subpart P—Protection of Visibility

2. Section 51.309 is amended by revising paragraphs (b)(6) and (d)(5)(i), deleting paragraphs (d)(ii) and (d)(iii), and renumbering (d)(iv) to (d)(ii), to read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b)(6) *Continuous decline in total mobile source emissions* means that the projected level of emissions from mobile sources of each listed pollutant in 2008, 2013, and 2018, are less than the projected level of emissions from mobile sources of each listed pollutant for the previous period (*i.e.*, 2008 less than 2003; 2013 less than 2008; and 2018 less than 2013).

* * * * *

(d)(5)(i) Statewide inventories of onroad and nonroad mobile source emissions of VOC, NO_X, SO_2, $PM_{2.5}$, elemental carbon, and organic carbon for the years 2003, 2008, 2013, and 2018.

(A) The inventories must demonstrate a continuous decline in total mobile source emissions (onroad plus nonroad; tailpipe and evaporative) of VOC, NO_X, $PM_{2.5}$, elemental carbon, and organic carbon, evaluated separately. If the inventories show a continuous decline in total mobile source emissions of each of these pollutants over the period 2003–2018, no further action is required as part of this plan to address mobile source emissions of these pollutants. If the inventories do not show a continuous decline in mobile source emissions of one or more of these pollutants over the period 2003–2018, the plan submission must provide for an implementation plan revision by no later than December 31, 2008 containing any necessary long-term strategies to achieve a continuous decline in total mobile source emissions of the pollutant(s), to the extent practicable, considering economic and technological reasonableness and federal preemption of vehicle standards and fuel standards under title II of the CAA.

(B) The plan submission must also provide for an implementation plan revision by no later than December 31, 2008 containing any long-term strategies necessary to reduce emissions of SO_2 from nonroad mobile sources, consistent with the goal of reasonable progress. In assessing the need for such long-term strategies, the State may consider emissions reductions achieved or anticipated from any new Federal standards for sulfur in nonroad diesel fuel.

(ii) [*text of (iv) retained same as before*]

[FR Doc. 03–16923 Filed 7–2–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI68

Endangered and Threatened Wildlife and Plants; Listing of the Central California Distinct Population Segment of the California Tiger Salamander; Reclassification of the Sonoma County and Santa Barbara County Distinct Populations From Endangered to Threatened; Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service, are extending the comment period on a proposed rule that would: (1) List the Central California distinct population segment (DPS) of the California Tiger Salamander (*Ambystoma californiense*) as a threatened species under the Endangered Species Act of 1973, as

amended (Act) (16 U.S.C. 1531 *et seq.*); (2) reclassify the Sonoma County and Santa Barbara County DPSs of the California Tiger Salamander from endangered to threatened; and (3) exempt, under section 4(d) of the Act, existing routine ranching activities on private or Tribal lands from section 9 prohibitions for the three DPSs of the California tiger salamander. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule. We are also providing two additional public hearings to receive oral comments on this proposed rule.

DATES: Comments and information from all interested parties will be accepted until 5 p.m. on September 22, 2003. We will hold public hearings at the following times:

(1) Tuesday, July 29, 2003, in Santa Rosa, California. Two sessions: 1 p.m. until 3 p.m. and 6 p.m. until 8 p.m. Registration will begin at 12:30 p.m. for the afternoon session and at 5:30 p.m. for the evening session.

(2) Thursday, July 31, 2003, in Santa Maria, California. Two sessions: 1 p.m. until 3 p.m. and 6 p.m. until 8 p.m.. Registration will begin at 12:30 p.m. for the afternoon session and at 5:30 p.m. for the evening session.

ADDRESSES:

(1) You may submit written comments to the Field Supervisor (Attn: CTS), U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825.

(2) You may send comments by electronic mail (e-mail) to: *catiger@R1.fws.gov.* See the ''Public Comments Solicited'' section below for file format and other information on electronic filing.

(3) You may hand-deliver comments to our Sacramento Fish and Wildlife Office at the address above.

(4) You may make oral comments at a public hearing. Such oral comments will be transcribed and given weight equal to that of written comments.

We will hold public hearings at the Flamingo Resort Hotel and Conference Center, 2777 Fourth St., Santa Rosa, CA, and at the Radisson Hotel Santa Maria, 3455 Skyway Dr., Santa Maria, CA.

Comments and materials received, as well as supporting documentation used in the preparation of the proposed rule, will be available for public inspection, by appointment, during normal business hours, at the above address. You may obtain copies of the proposed rule from the above address, by calling (916) 414–6600, or from our Web site at *http://sacramento.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner or Glen Tarr, Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825 (telephone (916) 414–6600, facsimile (916) 414–6713, or visit our Web site at *http://sacramento.fws.gov/*). Information regarding this proposal is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2003, we published a proposed rule to list the central California DPS of the California tiger salamander as a threatened species (68 FR 28647). The rule also proposed to reclassify the Sonoma County and Santa Barbara County DPSs from endangered to threatened, and to exempt, under section 4(d) of the Act, existing routine ranching activities from ''take'' prohibitions under section 9 of the Act for the three DPSs. For further information regarding background biological information, previous Federal actions, factors affecting the subspecies, and conservation measures available to these three DPSs of the California tiger salamander, please refer to this proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we are soliciting comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We are particularly seeking comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the California tiger salamander;

(2) The location of any additional subpopulations or breeding sites of this species, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population sizes of this species;

(4) Current or planned activities or land use practices in the subject area and their possible impacts on this animal; and

(5) Additional information pertaining to the promulgation of a special rule to exempt from section 9 take prohibitions existing routine ranching practices located on private and Tribal lands.

Previously submitted comments need not be resubmitted. If you submit comments by electronic mail (e-mail), please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AI68'' and your name and address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling the Sacramento Fish and Wildlife Office (*see* **ADDRESSES**).

Anyone wishing to make an oral comment or statement for the record at one of the hearings listed above is encouraged (but not required) to also provide a written copy of the statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed, faxed, or e-mailed to us. Legal notices announcing the date, time, and location of the public hearing will be published in newspapers concurrently with this **Federal Register** notice.

Persons needing reasonable accommodations in order to attend and participate in a public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Author

The primary authors of this notice are Chris Nagano, Chief, Endangered Species Division and Glenn Tarr, Acting Chief, Listing Branch (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 19, 2003.

Thomas O. Melius,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–16881 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 128
Thursday, July 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Performance Review Board Appointments

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Performance Review Board for the Advisory Council on Historic Preservation.

DATES: These appointments are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ralston Cox, Director, Office of Administration, Advisory Council on Historic Preservation, Room 809, 1100 Pennsylvania Avenue, NW., Washington, DC 20004–2501. Telephone Number: (202) 606–8528.

Senior Executive Service Performance Review Board

The following individuals have been appointed to serve on the Performance Review Board for the Advisory Council on Historic Preservation.

Bernadette Castro, Vice Chairman of the Advisory Council on Historic Preservation and Commissioner, New York State Office of Parks, Recreation, and Historic Preservation;

Nelson R. Bregon, Deputy Assistant Secretary for Grant Programs, Office of Community Planning and Development, U.S. Department of Housing and Urban Development;

Patrick J. Meehan, Jr., Director, Program Integration, Office of the Deputy Undersecretary of Defense for Installations and Environment, U.S. Department of Defense;

Anthony E. Costa, Assistant Regional Administrator, Public Buildings Service, National Capital Region, General Services Administration;

John C. Surina, Deputy Assistant Secretary for Administration, U.S. Department of Agriculture.

Dated: June 30, 2003.

Ralston Cox,

Director, Office of Administration, Advisory Council on Historic Preservation.

[FR Doc. 03–16936 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–10–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: August 3, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

(End of Certification)

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Folder, Classification, Pressboard

7530–00–NIB–0672 (Legal Size—1 Divider/4 Part—Light Blue)

7530–00–NIB–0673 (Legal Size—1 Divider/6 Part—Red)

7530–00–NIB–0674 (Legal Size—1 Divider/4 Part—Dark Blue)

7530–00–NIB–0675 (Legal Size—1 Divider/4 Part—Green)

7530–00–NIB–0676 (Legal Size—1 Divider/4 Part—Yellow)

7530–00–NIB–0679 (Letter Size—2 Divider/6 Part—Gray/Green)

NPA: Georgia Industries for the Blind, Bainbridge, Georgia.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Product/NSN: Jumbo Butterfly Mop, M.R. 1035.

NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.

Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–16945 Filed 7–2–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 3, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 18, and April 25, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 19188, and 20371) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

(End of Certification)

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Grounds Maintenance, U.S. Border Station, St. John Highway, New York.
NPA: Clinton County Chapter, NYSARC, Inc., Plattsburgh, New York.
Contract Activity: GSA/PBS Upstate New York Service Center , Syracuse, New York.
Service Type/Location: Janitorial/Custodial, Fridley USARC, Covington, Virginia.
NPA: Jackson River Enterprises, Covington, Virginia.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–16946 Filed 7–2–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Redesignation of Services

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Redesignation of procurement list services.

SUMMARY: This notice redesignates services on the Procurement List which will be procured on a consolidated basis rather than individually. These services are being performed for the Department of the Navy in the Puget Sound area. Comments on this redesignation must be received by August 3, 2003.

EFFECTIVE DATE: July 3, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The following services are on the Procurement List to be performed by the designated nonprofit agencies for the Department of the Navy activities identified below:

Service Type/Location: Grounds Maintenance, Whidbey Island Naval Air Station, Oak Harbor, Washington.
NPA: New Leaf, Inc., Oak Harbor, Washington.
Contract Activity: Department of the Navy.
Service Type/Location: Grounds Maintenance, Puget Sound Naval Shipyard, Bremerton, Washington.
NPA: Peninsula Services, Bremerton, Washington.
Contract Activity: Department of the Navy.
Service Type/Location: Grounds Maintenance, Keyport Naval Undersea Warfare Center, Keyport, Washington.
NPA: Peninsula Services, Bremerton, Washington.
Contract Activity: Department of the Navy.
Service Type/Location: Grounds Maintenance, Fox Island Acoustic Laboratory, Fox Island, Washington.
NPA: Peninsula Services, Bremerton, Washington.
Contract Activity: Department of the Navy.
Service Type/Location: Grounds Maintenance, Janitorial/Custodial, Grounds Maintenance, Mess Attendant (The Grounds Maintenance Portion of this project will be consolidated October 1, 2003), Naval Station Everett, Everett, Washington.
NPA: Northwest Center for the Retarded, Seattle, Washington.
Contract Activity: Department of the Navy.
Service Type/Location: Grounds Maintenance, Naval Ordnance Center, Pacific Division, Detachment Port Hadlock, Port Hadlock, Washington.
NPA: Skookum Education Programs, Port Townsend, Washington.
Contract Activity: Department of the Navy.

The above services will be procured by the Department of the Navy on a consolidated basis and are thus being redesignated collectively on the Procurement List as set forth below, and the nonprofit agency identified below has been designated as the qualified nonprofit agency which will serve as prime contractor for the consolidated services. The services identified above will remain on the Procurement List for performance by the above-designated nonprofit agencies.

Service Type/Location: Facility Support Services, Various locations in the Navy Region Northwest.
NPA: Skookum Educational Programs, Port Townsend, Washington.
Contract Activity: Engineering Field Activity, Naval Facilities

Engineering Command, Department of the Navy, Poulsboro, Washington.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–16947 Filed 7–2–03; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Delaware Advisory Committee will convene at 1 p.m. and adjourn at 3:30 p.m. on Tuesday, July 15, 2003. The purpose of the conference call is to plan projects and gather input on meaningful and measurable SAC activity.

This conference call is available to the public through the following call-in number: 1–800–659–8292, access code 17529964, contact name Edward Darden. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and [contact name or access code number, which ever you select].

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Edward Darden of the Eastern Regional Office, 202–376–7533, TDD number 202–376–8116, by 1 p.m. on Monday, July 14, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 26, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–16934 Filed 7–2–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Massachusetts Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 2 p.m. on Thursday, July 17, 2003. The purpose of the conference call is for the project planning subcommittee to discuss and choose project topic and alternatives to present to the full committee.

This conference call is available to the public through the following call-in number: 1–888–532–3522, access code: 17805880, contact name Aonghas St-Hilaire. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Wednesday, July 16, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 26, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–16932 Filed 7–2–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Virginia Advisory Committee will convene at 1 p.m. and adjourn at 3:30 p.m. on Wednesday, July 16, 2003. The purpose of the conference call is to make plans that advance current SAC projects and gather input regarding meaningful and measurable SAC activity in the current context.

This conference call is available to the public through the following call-in number: 1–800–659–1145, access code number: 17780815, contact name is Edward Darden. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Edward Darden of the Eastern Regional Office, (202) 376–7533, TDD (202) 376–8116 by 1 p.m. on Tuesday, July 15, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 26, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–16933 Filed 7–2–03; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–2003]

Foreign-Trade Zone 40—Cleveland, OH, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, requesting authority to expand its zone in the Cleveland, Ohio, area, within the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 27, 2003.

FTZ 40 was approved on September 29, 1978 (Board Order 135, 43 FR 46886, 10/11/78) and expanded in June 1982 (Board Order 194, 47 FR 27579, 6/25/82); April 1992 (Board Order 574, 57 FR 13694, 4/17/92); February 1997 (Board

Order 870, 62 FR 7750, 2/20/97; June 1999 (Board Order 1040, 64 FR 33242, 6/22/99); and, April 2002 (Board Order 1224, 67 FR 20087, 4/15/02). The general-purpose zone project currently consists of the following sites in the Cleveland, Ohio, area: *Site 1* (94 acres)—Port of Cleveland complex on Lake Erie at the mouth of the Cuyahoga River, Cleveland; *Site 2* (128 acres)—the IX Center (formerly the ''Cleveland Tank Plant''), in Brook Park, adjacent to the Cleveland Hopkins International Airport; *Site 3* (1,900 acres)—Cleveland Hopkins International Airport complex; *Site 4* (450 acres)—Burke Lakefront Airport, 1501 North Marginal Road, Cleveland; *Site 5* (298 acres)—Emerald Valley Business Park, Cochran Road and Beaver Meadow Parkway, Glenwillow; *Site 6* (30 acres)—Collinwood site, South Waterloo (South Marginal) Road and East 152nd Street, Cleveland; *Site 7* (47 acres)—Water Tower Industrial Park, Coit Road and East 140th Street, Cleveland; *Site 8* (83 acres)—Strongsville Industrial Park, Royalton Road (State Route 82), Strongsville; *Site 9* (13 acres)—East 40th Street between Kelley & Perkins Avenues (3830 Kelley Avenue), Cleveland; and, *Site 10* (15 acres)—Frane Industrial Park, Forman Road, Ashtabula; *Temporary Site 11* (15 acres)—Snow Road Industrial Park, 18901 Snow Road, Brook Park; and, *Temporary Site 12* (32 acres)—Tow Path Valley Business Park, 3060 Eggers Avenue, Cleveland. Applications are pending with the FTZ Board to expand existing Site 3 (Docket 38–2002), to expand existing Site 1 (Docket 6–2003) and to expand existing Site 8 (Docket 14–2003).

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (New Proposed Site 11) in the City of Vermilion (Lorain County). *New Proposed Site 11* (172 acres, 2 parcels) is located within the 800-acre Harbour Point Business Park, Baumhart Road, at the intersections of U.S. Route 6 and Ohio Route 2, Vermilion. (Though there is an existing Site 11, it is temporary, and an application is pending with the Board that would incorporate it as part of Site 3.) The proposed zone project is immediately adjacent to the Ford Motor Company subzone in Lorain. The site is owned by Great Lakes Development, Ltd. The site will provide public warehousing and distribution services to area businesses. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099—14th Street, NW., Washington, DC 20005.

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is September 2, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 16, 2003).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 600 Superior Avenue East, Suite 700, Cleveland, OH 44114.

Dated: June 27, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–16921 Filed 7–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–862]

Notice of Postponement of Final Antidumping Duty Determination: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Postponement of final antidumping duty determination.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Michele Mire, 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) 482–0065 or (202) 482–4711, respectively.

SUMMARY: The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of high and ultra-high voltage ceramic station post insulators (HVSPs) from Japan. The deadline for issuing the final determination in this investigation is now October 29, 2003.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2003, the Department published its preliminary determination in the investigation of HVSPs from Japan (68 FR 35627). The notice stated that the Department would issue its final determination no later than 75 days after the date of publication of the preliminary determination.

Postponement of Final Determination

On June 20, 2003, the Department received a request for postponement of the final determination from NGK Insulators, Ltd., a manufacturer/exporter who accounts for a significant portion of the exports of subject merchandise. There are no compelling reasons for the Department to deny this request. Therefore, pursuant to section 19 CFR 351.210(b)(2)(ii), the Department is postponing the deadline for issuing the final determination until October 29, 2003.

This notice of postponement is in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(b)(2)(ii).

Dated: June 23, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–16919 Filed 7–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Welded Carbon Steel Pipes and Tubes From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty review: Welded carbon steel pipes and tubes from India.

EFFECTIVE DATE: July 3, 2003.

SUMMARY: On May 30, 2003, the Department of Commerce received a request to conduct a new shipper review of the antidumping duty order on welded carbon steel pipes and tubes from India. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as

amended, and 19 CFR 351.214(d), we are initiating a new shipper review.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross at (202) 482–1690 and (202) 482–4794, respectively, AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on welded carbon steel pipes and tubes from India was published on May 12, 1986. On May 30, 2003, we received a request for a new shipper review of the antidumping duty order on welded carbon steel pipes and tubes from India from Surya Roshni, Ltd. (Surya), and K&K Enterprises, Inc. Surya is both the producer and exporter of the subject merchandise on which its request for a new shipper review is based.

Initiation of Review

Pursuant to 19 CFR 351.214(b)(2)(i) and (iii)(A), Surya provided a certification that it did not export subject merchandise to the United States during the period of investigation (POI) and, that since the initiation of the investigation, it has never been affiliated with any exporter or producer that exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation.

In addition, Surya submitted documentation establishing the following: (1) The date on which it first shipped the subject merchandise for export to the United States and the date on which its subject merchandise was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment and the volume of subsequent shipments; and (3) the date of its first sale to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Tariff Act, as amended (the Act), and 19 CFR 351.214(d)(1), we are initiating a new shipper review for shipments of welded carbon steel pipes and tubes from India produced and exported by Surya. The period of review is May 1, 2002, through April 30, 2003. *See* 19 CFR 351.214(g)(1)(i)(A). We intend to issue the final results of this review no later than 270 days from the date of initiation. *See* 19 CFR 351.214(i).

We will instruct the Bureau of Customs and Border Protection to continue to suspend liquidation of any entries of the subject merchandise and to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the subject merchandise produced and exported by Surya until the completion of the review. Surya has certified that it both produced and exported the subject merchandise on which it based the request for a new shipper review. Therefore, we will apply the bonding option only to subject merchandise for which it is both the producer and exporter.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 30, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–16920 Filed 7–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021903B]

RIN 0648–AQ24

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Rebuilding Plan for Greater Amberjack in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency action.

SUMMARY: NMFS announces approval of Secretarial Amendment 2 to the Reef Fish Fishery Management Plan (Secretarial Amendment 2) that establishes a 10–year stock rebuilding plan for greater amberjack in the Gulf of Mexico. The Secretary of Commerce, acting through the Gulf of Mexico Fishery Management Council (Council), prepared Secretarial Amendment 2. The greater amberjack rebuilding plan consists of a series of 3–year management goals and the associated management measures and actions necessary to achieve those goals, as determined by the status of the stock during each of the 3–year intervals. Secretarial Amendment 2 also establishes biomass-based stock rebuilding targets and thresholds (i.e., maximum sustainable yield (MSY), optimum yield (OY), maximum fishing mortality threshold (MFMT), and minimum stock size threshold (MSST)), consistent with the requirements of the Sustainable Fisheries Act of 1996 (SFA). The intended effect of Secretarial Amendment 2 is to prevent overfishing and rebuild the greater amberjack resource consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) while minimizing, to the extent practicable, adverse economic impacts on all users of the resource and the affected fishing communities.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–570–5305, fax: 727–570–5583, e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

On March 14, 2003, NMFS published a notice of availability of Secretarial Amendment 2 and requested public comment (68 FR 12344). After considering the public comments received, NMFS approved Secretarial Amendment 2, without modification, on June 12, 2003. The background and rationale for the measures in Secretarial Amendment 2 are contained in the amendment and the notice of availability and are not repeated here.

Comments and Responses

NMFS received one set of comments on Secretarial Amendment 2 from a group of environmental organizations. Those comments and NMFS' responses are provided below.

Comment 1: NOAA Fisheries must assess the amount and type of bycatch occurring in each fishery and ensure that each plan includes conservation and management measures that, to the extent practicable, minimize bycatch and minimize the mortality of such bycatch that cannot be avoided.

Response: NMFS is committed to working through the Council process for development and implementation of fishery management plans to minimize bycatch, and to the extent practicable,

minimize the mortality of bycatch that cannot be avoided. Within this mandate, NMFS is working with the Council to: (1) promote the development and improvement of a database on bycatch and bycatch mortality; (2) assess the effects of management measures on the amount and type of bycatch and bycatch mortality; and (3) select measures that, to the extent practicable, will minimize bycatch and bycatch mortality.

Additionally, NMFS has established a National Bycatch Working Group to begin the process of developing scientific and policy strategies for addressing the nation's bycatch problems. The National Bycatch Strategy consists of six components, all of which are being implemented within different time frames and include: (1) Assessing progress toward meeting the national bycatch goal, its supporting objectives and strategies, and regional recommendations as set forth in NMFS' 1998 publication *Managing the Nation's Bycatch* (available at *http://www.nmfs.noaa.gov/bycatch.htm*); (2) Developing a national approach to a standardized bycatch reporting methodology; (3) Implementing the national bycatch goal through regional implementation plans; (4) Undertaking education and outreach involving cooperative efforts to develop effective and efficient methods for reducing bycatch; (5) Utilizing existing partnerships and developing new international approaches to reducing bycatch of living marine resources including fish stocks, sea turtles, marine mammals, and migratory birds, where appropriate; and (6) Identifying new funding requirements to effectively support the NMFS National Bycatch Strategy on an ongoing basis.

Comment 2: Secretarial Amendment 2 is not approvable because it does not address bycatch.

Response: The greater amberjack resource in the Gulf of Mexico was declared overfished by NMFS on February 9, 2001, but is not considered to be undergoing overfishing due to Council actions taken in 1997, 1998, and 1999. Consequently, actions to further reduce fishing mortality are not needed at this time. Through this amendment, NMFS establishes a rebuilding plan for greater amberjack in the Gulf of Mexico. Actions in the amendment include setting total allowable catch (TAC) for 3–year intervals with TAC being set at the yield associated with year one of the 3–year interval from the constant F40% rebuilding stream. TAC will be 2.9 million lb (1.3 million kg) for the years 2003–2005, 5.2 million lb (2.6 million kg) for years 2006–2008, 7.0 million lb (3.2 million kg) for years 2009–2011, and 7.9 million lb (3.6 million kg) for 2012. Additionally, the amendment contains biomass-based definitions of maximum sustainable yield and optimum yield and adds new stock status determination criteria regarding definitions of ''overfished'' (minimum stock size threshold) and ''overfishing'' (maximum fishing mortality threshold). These criteria are necessary to meet requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act. The amendment does not change the current fishing regulations for greater amberjack.

While Secretarial Amendment 2 does not specifically address bycatch reporting methodologies or methods to minimize bycatch and reduce bycatch mortality, methodologies for reporting this information have already been implemented. The methodology for reporting bycatch from the recreational component of the catch of greater amberjack was implemented through the Marine Recreational Fisheries Statistics Survey program developed by NMFS. The commercial component of the greater amberjack catch has been monitored through the commercial logbook program since 1992. This program has required that all vessels submit a reporting form for each trip listing landings by species, numbers and pounds. Additionally, beginning in 2001, the NMFS Southeast Fisheries Science Center has required 20 percent of all the permitted vessels to submit forms for each trip listing species discarded as bycatch by number.

Further, additional alternatives to address bycatch issues are currently being developed for the entire reef fish management unit in Amendment 18 to the Reef Fish Fishery Management Plan. An options paper for Amendment 18 is scheduled for presentation at the Gulf of Mexico Fishery Management Council (Council) meeting in July 2003. The Council is tentatively scheduled to take final action on this amendment at its November 2003 meeting. While Amendment 18 will focus primarily on grouper management actions, it will also address bycatch issues for all species within the reef fish fishery management unit including greater amberjack.

Comment 3: Recommended Options for Status Determination Criteria

Maximum Sustainable Yield (MSY) Alternatives - While Alternative 1, the Preferred Alternative, which sets MSY at the yield value of 9.5 million lb (4.3 million kg) is technically consistent with expected values produced by the most recent stock assessment on greater amberjack, the legal requirements of the Magnuson-Stevens Act and applicable NOAA Fisheries guidance documents, we are concerned that these landings are overly optimistic. Our concern is that the highest documented level of greater amberjack taken in the Gulf is approximately 10 million lb (4.5 million kg) in 1989. Landings from the mid 1980s through the early 1990s averaged approximately 6 million lb (2.7 million kg). High landings during these years are thought to be part of the reason greater amberjack are now in an overfished state. Accordingly, we ask that future scientific work be undertaken to refine status determination criteria for this species.

Response: The Preferred Alternative, Alternative 1, describes the yield that would be associated with the fishing mortality rate (F) needed to maintain a population at 30 percent spawning potential ratio (SPR) in equilibrium conditions and so is consistent with recommendations made to the Council about this species for setting MSY in the generic Sustainable Fisheries Act (SFA) amendment. It is also consistent with the current maximum fishing mortality threshold (MFMT) of F30% SPR that has been approved by NMFS. In the most recent stock assessment, the yield estimated from fishing at F30% SPR was 9.5 million lb (4.3 million kg). Alternative 1 is consistent with the best available scientific estimate of what MSY should be. Fishing at or below this recommended level (F30% SPR) to achieve this yield should allow the stock to be fished over the long term and maintain the highest average yield possible.

Further, the period of highest landings for amberjack was 1986–1989 when the annual landings averaged 7.7 million lb (3.5 million kg) and peaked in 1989 at 9.9 million lb (4.5 million kg). The most likely reason that the current estimate of MSY is so much higher than historical landings is that, until 1990, there were no minimum size limits on this species. Cummings and McClellan (2000) indicate that prior to 1990, a substantial amount of small fish (less than 16–inch (40.6–cm) fork length) were landed by the fishery. Therefore, growth overfishing and possibly recruitment overfishing may have been occurring. It was not until 1998 that all the current management measures were implemented and halted overfishing. NMFS will revisit these estimates as new information from stock assessments becomes available.

Optimum Yield (OY) Alternatives - We have similar concerns with proposed Alternative 1, the Preferred Alternative, which sets OY at a value of 8.5 million lb (3.9 million kg). We are concerned that this level may be too

high based on an analysis of past landings and the current condition of greater amberjack. We therefore again recommend that this value will be reassessed at regular intervals to insure its soundness.

Response: According to NMFS national standard guidelines on the Magnuson-Stevens Act (50 CFR Part 600.310), OY is based on MSY or MSY as it may be reduced to take into account social, economic, or ecological factors. The guidelines go on to say that Councils should adopt a precautionary approach in specifying OY including reference points set safely below limit reference points and that these targets be ''explicitly'' risk averse. NMFS technical guidance in setting an OY level suggests that OY should be set at a yield where the fishing mortality rate is 25 percent below the limit fishing mortality rate (i.e., 0.75 * F_{MSY}). Advantages of setting F at this level are: (1) the probability of exceeding the MFMT is low (20–30 percent), and (2) because the total mortality on the stock is reduced, the stock size is allowed to increase. Restrepo *et al.* (1998) estimated that by fishing at 0.75 * FMSY, the stock is allowed to build to 125–131 percent of BMSY and that the resultant reduction in yield is only about 6 percent of MSY. Specifically for greater amberjack, fishing at the FMSY proxy (0.75 * $F_{30\%SPR}$) would allow the stock to build to 128 percent of the spawning stock biomass at MSY (SSB_{MSY}), with the resultant yield of about 92 percent of MSY.

The Preferred Alternative (Alternative 1) defines OY as the yield associated with an $F_{40\%}$ SPR when the stock is at equilibrium, and is actually more conservative than what is recommended by NMFS. According to Turner (2002), the estimated value of $F_{40\%}$ SPR is 72 percent of $F_30\%$ SPR (the proxy they used for FMSY). Based on estimates of yield at $F_{40\%}$ (8.5 million lb (3.9 million kg)) and at $F_{30\%}$ (9.5 million lb (4.3 million kg)), the OY yield from Alternative 1 would be 89 percent of the Preferred Alternative for MSY (the yield associated with an $F_{30\%}$). Alternative 1 also is consistent with NMFS recommendations for OY in the generic SFA amendment that OY should correspond with a stock at 40 percent static SPR.

NMFS will continue to provide the Council with annual updates on the greater amberjack harvest. These updates would cover each calender year and be presented as soon as the information can be properly collated. The purpose of these updates would be to insure that the annual harvest by the recreational and commercial fisheries was not exceeding the expected annual harvest needed for the rebuilding plan, and to provide any potential new information that may be incorporated into the rebuilding plan.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–16880 Filed 7–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061603A]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) renewed the affirmative finding for the Republic of Ecuador under the Marine Mammal Protection Act (MMPA). This renewal allows the continued importation into the United States of yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) after March 3, 1999, by Ecuadorian-flag purse seine vessels or vessels operating under Ecuadorian jurisdiction greater than 400 short tons (362.8 mt) carrying capacity. The affirmative finding renewal was based on review of documentary evidence submitted by the Republic of Ecuador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the Department of State. This finding remains in effect through March 31, 2004.

DATES: Effective April 1, 2003, through March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA, 90802–4213; Phone 562–980–4000; Fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, as amended by the International Dolphin Conservation Program Act (IDCPA) (Public Law 105–42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State. A finding will remain valid for 1 year (April 1 through March 31) or for such other period as the Assistant Administrator may determine. An affirmative finding applies to tuna and tuna products that were harvested in the ETP by purse seine vessels of the nation after March 3, 1999, the effective date of the IDCPA.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the International Dolphin Conservation Program (IDCP). A nation may provide information regarding compliance with the IDCP directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator.

As a part of the annual review process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Republic of Ecuador or obtained from the IATTC and the Department of State and determined that Ecuador has met the MMPA's requirements to receive an affirmative finding. After consultation with the Department of State, NMFS renewed the Republic of Ecuador's affirmative finding allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Ecuadorian-flag purse seine vessels or vessels under Ecuadorian jurisdiction greater than 400 short tons (362.8 metric tons) carrying capacity after March 3, 1999. This renewal will remain in effect for 1 year (April 1, 2003, through March 31, 2004).

In 2004, the Assistant Administrator will determine whether the Republic of Ecuador is meeting the requirements

under section 101(a)(2)(B) and (C) of the MMPA. If necessary, documentary evidence may also be requested from the Republic of Ecuador to determine whether the affirmative finding criteria are being met. In order for the affirmative finding for the Republic of Ecuador to be renewed after NMFS's annual review in 2004, the Republic of Ecuador must submit a new application in early 2005 for an affirmative finding to be effective for the period April 1, 2005, through March 31, 2006, and the subsequent 4 years.

Dated: June 26, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–16878 Filed 7–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061803K]

Marine Mammals; File No. 455–1445

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Waikiki Aquarium, 2777 Kalakaua Avenue, Honolulu, Hawaii 96815 (Dr. Cindy Hunter, Principal Investigator) has been issued an amendment to scientific research and enhancement Permit No. 455–1445–03.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Protected Species Coordinator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Blvd., Rm, 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This minor amendment extends the expiration date of the permit to maintain Hawaiian monk seals (*Monachus schauinslandi*) for scientific research and enhancement purposes from June 30, 2003 to June 30, 2004.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 27, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–16879 Filed 7–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Aperture Stop with Low Backscattering

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 10/006,316 entitled ''Aperture Stop with Low Backscattering,'' filed December 4, 2001. Foreign rights are also available (PCT/US02/38225). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A system including but not limited to a low-backscatter aperture structure, where the system can include but is not limited to a camera, an optical communications system, an imaging system, a test system, and a measurement system.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–16874 Filed 7–2–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Continuous Aimpoint Tracking System

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 101/103,748, titled ''Continuous Aimpoint Tracking System'' and filed on March 22, 2002. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Aviation and Missile Command, ATTN: Operations of Research Technology Applications, AMSAM–RD–AS–TI–HI, Redstone Arsenal, AL 35898–5000.

FOR FURTHER INFORMATION CONTACT: Mr. Kelly McGuire at telephone 256/876–8743 or e-mail: *kelly.mcguire@rdec.redstone.army.mil.*

SUPPLEMENTARY INFORMATION: The Continuous Aimpoint Tracking System is comprised of a position detection device (PDD) and a laser pointing device (LDP) that projects an infrared crosshair onto the PDD. The PDD is coupled to a computer and comprises a multitude of photodiodes and associated circuits, the photodiodes being evenly spaced and arranged to form a frame that can be mounted on the computer so as to surround the computer video display. When a ''shot'' is fired from the LPD, the crosshair projection is interrupted briefly. The PDD determines the position of the four crosshair intersections and reports them to the computer which, in response, generates the video signals that form the resolved aimpoint on the screen, matching the LPD aimpoint to the video image. Further, the tracking system determines the rotation of the LPD over a range of

at least 10 degrees clockwise or counter-clockwise.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–16877 Filed 7–2–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Soft Landing Assembly for a Parachute

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR Part 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,575,408 B2 entitled ''Soft Landing Assembly for a Parachute'' issued June 10, 2003. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, phone: (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–16875 Filed 7–2–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board

AGENCY: Department of the Army; Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Dates of Meeting: July 22–24, 2003.

Place: Embassy Suites Downtown, Chicago, IL.

Times: 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Mr. Thomas W. Richardson, Acting Executive Secretary, Coastal Engineering Research Board, Coastal and Hydraulics Laboratory, U.S. Army Engineer Research and Development Center, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* On Tuesday, July 22, 2003, presentations and discussions will pertain to the Monitoring Complete Navigation Projects, Coastal Field Data Collection, National Shoreline Erosion Control Development and Demonstration Program (Section 227), and the Coastal Inlets Research Program. On Wednesday, July 23, 2003, presentations and discussions will include the Flood and Coastal Systems, and on Thursday, July 24, 2003, presentations and discussions will include the Navigation Systems.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–16876 Filed 7–2–03; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Naval Research Advisory Committee will meet to discuss basic and advanced research and technology. All sessions of the meetings will be devoted to briefings, discussions and technical examination of information related to the application of science and technology to FORCEnet; the reform of technology acquisition; and the assessment of electromagnetic gun technology.

DATES: The meetings will be held on Monday, July 21, 2003, through Friday, July 25, 2003, from 8 a.m. to 5 p.m. Also on Monday, July 28, 2003, through Thursday, July 31, 2003, from 8 a.m. to 5 p.m. and on Friday, August 1, 2003, from 8 a.m. to 12 p.m.

ADDRESSES: The meetings will be held at the Space and Naval Warfare Systems Center San Diego, 53560 Hull Street, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Dennis Ryan, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, (703) 696–6769.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). All sessions of the meeting will be devoted to discussions of basic and advanced research and associated science and technology opportunities with respect to concepts and science and technology (S&T) initiatives, including those in the space, atmospheric, surface and subsurface environments, required to achieve the visions of FORCEnet and Sea Power 21; alternative approaches to technology acquisition that could be implemented within the Department of the Navy's acquisition system; and, initiatives required to produce a militarily effective Naval electromagnetic (EM) gun system. These briefings and discussions will contain proprietary information and classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive Order. The proprietary, classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. section 552b(c)(1) and (4).

Dated: June 27, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–16842 Filed 7–2–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.326C]

Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Projects for Children and Young Adults Who Are Deaf-Blind (84.326C)

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services invites applications for FY 2003 under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program. This program is authorized under the Individuals with Disabilities Education Act (IDEA), as amended. This notice provides closing dates, priorities, and other information regarding the transmittal of applications.

Purpose of Program: This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for changing State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Applications Available: July 7, 2003.

Deadline for Transmittal of Applications: August 6, 2003.

Deadline for Intergovernmental Review: October 6, 2003.

Estimated Available Funds: $9.5 million.

Estimated Range of Awards: $30,000—$575,000.

Estimated Average Size of Awards: $179,000.

Maximum Awards: The chart shown in the Project Award section of this notice lists the maximum amount of funds for individual States for FY 2003. The Secretary may make awards under the priority described in the Priorities section to support single or multi-State projects. A State may be served by only one supported project. In determining the maximum funding levels for each State the Secretary considered, among other things, the following factors:

(1) The total number of children from birth through age 21 in the State;

(2) Number of people in poverty in the State;

(3) Previous funding levels; and

(4) Maximum and minimum funding amounts.

Estimated Number of Awards: 48.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application submitted under this notice, the application narrative, is where you, the applicant, address the selection criteria that reviewers use in evaluating your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria

In evaluating an application for a new grant under this competition, we will use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition will be provided in the application package for this competition.

General Requirements

(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients under this competition must involve qualified individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) If a project maintains a Web site, it must include relevant information and documents in an accessible form on the Web site.

Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following absolute priority:

Background

IDEA includes provisions designed to ensure that each child with a disability is provided a high-quality individual program of services to meet his or her developmental and educational needs. For children who are deaf and blind to receive such services, intensive technical assistance must be afforded State and local educational agencies, parents, and professionals regarding appropriate educational placements, accommodations, environmental adaptations, support services, and other matters. In addition, given the severity of deaf-blindness and the low-incidence nature of this population, many early intervention programs or local school districts lack personnel with the training or experience to serve children who are deaf-blind.

Priority

This priority supports projects to build the capacity of State and local agencies, parents, and professionals to improve outcomes for children and young adults who are deaf-blind, and their families, by providing technical assistance, information, and training on early intervention, special education, related services, and transitional services. Projects must:

(a) Identify and support specific activities to, at a minimum:

(1) Enhance State capacity to improve services and results for children who are deaf-blind;

(2) Facilitate the achievement of systemic-change goals by improving education opportunities for children who are deaf-blind;

(3) Focus on implementation of research-based best practices;

(4) Ensure that service providers have the necessary skills to address the unique needs of children who are deaf-blind; and

(5) Address the needs of families of children who are deaf-blind.

(b) Maintain needs assessment information to develop statewide priorities for technical assistance, information, and training across all age ranges by:

(1) Collecting basic demographic information on children with deaf-blindness;

(2) Assessing the critical needs of these children; and

(3) Assessing current needs of the State.

(c) Develop and implement procedures to evaluate the impact of program activities on services and outcomes for children and young adults with deaf-blindness and their families by:

(1) Evaluating the effectiveness of strategies in achieving program goals and objectives;

(2) Including measures of change in outcomes for children; and

(3) Consulting with the project's advisory committee regarding the development of the evaluation procedures.

(d) Coordinate, and collaborate with State educational agencies, and other relevant agencies and organizations, including other projects serving children who are deaf-blind under IDEA. This includes specific collaboration activities with the National Clearinghouse on Deaf-Blindness (DB–LINK) and the Technical Assistance Consortium with Children and Young Adults with Deaf-Blindness (NTAC).

(e) Disseminate effective practices and relevant information to families, service providers, LEAs, and agencies.

(f) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of OSEP's Dissemination Center, which OSEP plans to fund this year.

(g) Provide OSEP-specified technical assistance to States. This effort may include: (1) Participation in collaborative Web-based technical assistance activities, or (2) coordination of and participation in State-to-State communities of practice.

(h) Establish and maintain an advisory committee to assist in promoting project activities. Each committee must include at least one adult with deaf-blindness and one student with deaf-blindness, a parent of a child with deaf-blindness, a representative of each State educational agency and each State lead agency under Part C of IDEA in the State (or States) served by the project, and a limited number of professionals with training and experience in serving children with deaf-blindness.

(i) Budget for a three-day Project Directors' meeting in Washington, DC during each year of the project.

In making awards under this priority, the Secretary shall consider the proposed availability of services for children with deaf-blindness in all areas of the country. Funds awarded under this priority may not be used for direct early intervention, special education, or related services provided under Parts B and C of IDEA.

During year two, each project must conduct a comprehensive self-evaluation. The self-evaluation must include a review of the degree to which the project is meeting the proposed objectives and goals and an evaluation of the outcome data. Costs associated with this on site evaluation are estimated to be $6,500 and should be included in the project's second year budget. In addition, the Department of Education intends to conduct a limited number of on-site evaluations based on a stratified randomized sample of sites.

Project Awards

The following award amounts are for a single budget period of 12 months:

2003 FUNDING LEVELS FOR CFDA NO. 84.326C

State	Funding Level
AK	$106,971
AL	185,095
AR	118,534
AZ	175,338
CA	575,000
CO	154,079
CT	104,751
MA	126,661
ME	65,000
NH	65,807
DE	83,362
FL	362,027
GA	305,978
HI	77,491
IA	97,054
ID	85,303
IL	335,444
IN	210,093
KS	128,122
KY	165,145
LA	145,840
MD	164,366
MI	256,289
MN	171,335
MO	197,129
MS	133,605
MT	106,123
NC	313,649
ND	65,000
NE	78,471
NJ	268,086
NM	100,912
NY	575,000
NV	112,563
OH	259,320
WI	173,484
OK	131,374
OR	121,286
PA	371,952
PR	65,000
RI	79,368
SC	154,204
SD	101,746
TN	238,451
TX	575,000
UT	92,039
VA	234,082
VT	114,301
WA	195,750
WV	125,020
WY	65,000
DC	65,000
Pacific **	92,000
VI	30,000

**Entities include outlying areas and the Freely Associated States (FAS).

We will reject an application for a State project that proposes a budget exceeding the funding level for any single budget period of 12 months. In the event an applicant proposes a Multi-State project, the budget may not exceed the sum for individual participating States.

Waiver of Proposed Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 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. Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program ''—CFDA #84.326C is one of the programs included in the pilot project. If you are an applicant under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities

Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). 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. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may 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 e-Application.
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 elect to participate in the e-Application pilot for the Special Education-Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program and 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 Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program 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 Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.326C.

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

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 or a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

The program in this notice is subject to the requirements of 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 provides early notification of our specific plans and actions for this program.

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: *http://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.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html.*

Program Authority: 20 U.S.C. 1485.

Dated: June 30, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–16940 Filed 7–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–204–000]

AES Somerset, LLC, Complainant, v. Niagara Mohawk Power Corporation, Respondent; Notice of Complaint

June 26, 2003.

Take notice that on June 25, 2003, AES Somerset, LLC (Somerset) filed a complaint against Niagara Mohawk Power Corporation (Niagara Mohawk), requesting that the Federal Energy Regulatory Commission (Commission) issue an order prohibiting Niagara Mohawk from requiring Somerset's generating facility to pay retail tariff charges for self-supplied station power, including retail charges for transmission and distribution service and stranded cost recovery, and barring Niagara Mohawk from taking steps or actions to disconnect the generating facility from the New York State bulk power transmission system.

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: July 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16745 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. El03–127–000 et al.]

American Electric Power Service Corporation et al.; Order To Show Cause Concerning Gaming and/or Anomalous Market Behavior

Issued June 25, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

In the matter of: EL03–137–000, EL03–138–000, EL03–139–000, EL03–140–000, EL03–141–000, EL03–142–000, EL03–143–000, EL03–144–000, EL03–145–000, EL03–146–000, EL03–147–000, EL03–148–000, EL03–149–000, EL03–150–000, EL03–151–000, EL03–152–000, EL03–153–000, EL03–154–000, EL03–155–000, EL03–156–000, EL03–157–000, EL03–158–000, EL03–159–000, EL03–160–000, EL03–161–000, EL03–162–000, EL03–163–000, EL03–164–000, EL03–165–000, EL03–166–000, EL03–167–000, EL03–168–000, EL03–169–000, EL03–170–000, EL03–171–000, EL03–172–000, EL03–173–000, EL03–174–000, EL03–175–000, EL03–176–000, EL03–177–000, EL03–178–000, EL03–179–000: American Electric Power Service Corporation, Aquila, Inc., Arizona Public Service Company, Automated Power Exchange, Inc., Bonneville Power Administration, California Department of Water Resources, California Power Exchange, Cargill-Alliant, LLC, City of Anaheim, California, City of Azusa, California, City of Glendale, California, City of Pasadena, California, City of Reeding, California, City of Riverside, California, Coral power, LLC, Duke Energy Trading and Marketing Company, Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC, Enron Power Marketing, Inc. and Enron Energy Services Inc., F P & L Energy, Idaho Power Company, Los Angeles Department of Water and Power, Mirant Americans Energy marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC, Modesto Irrigation District, Morgan Stanley Capital Group, Northern California Power Agency, Pacific Gas and Electric Company, PacifiCorp, PGE Energy Services, Portland General Electric Company, Powerex Corporation, (f/k/a British Columbia Power Exchange Corp.), Public Service Company, of Colorado, Public Service Company of New Mexico, Puget Sound Energy, Inc., Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc., Salt River Project Agricultural Improvement and Power District, San Diego Gas & Electric Company, Sempra Energy Trading Corporation, Sierra Pacific Power Company, Southern California Edison Company, TransAlta Energy marketing (U.S.) Inc. and TransAlta Energy Marketing (California), Inc., Tucson Electric Power Company, Western Area Power Administration, Williams Energy Services Corporation.

I. Introduction

1. As discussed below, the entities listed in the caption (Identified Entities) appear to have participated in activities (Gaming Practices), that constitute gaming and/or anomalous market behavior in violation of the California Independent System Operator Corporation's (ISO) and California Power Exchange's (PX) tariffs during the period January 1, 2000 to June 20, 2001, that warrant a monetary remedy of disgorgement of unjust profits and that may warrant other additional, appropriate non-monetary remedies. These determinations are based on certain of the tariffs' provisions, an ISO study, a report by Commission Staff, and evidence and comments submitted by market participants.

2. As the Identified Entities appear to have participated in activities that constitute gaming and/or anomalous market behavior in violation of the ISO and PX tariffs, this order directs the Identified Entities, in a trial-type evidentiary hearing to be held before an administrative law judge (ALJ), to show cause why their behavior, as set forth *infra,* during the period January 1, 2000 to June 20, 2001 [1] does not constitute gaming and/or anomalous market behavior as defined in the ISO and PX

[1] June 20, 2001 has been selected as the end date of the relevant period in this proceeding when a prospective mitigation and market monitoring plan took effect. *See infra* note 56; *see* San Diego Gas & Electric Co., *et al.*, 95 FERC ¶ 61,115 (April 26, 2001 Order), order on reh'g, 95 FERC ¶ 61,418 (2001) (June 19, 2001 Order) (In the April 26, 2001 Order, the Commission issued a prospective mitigation and market monitoring plan for wholesale sales through the organized real-time markets operated by the ISO; the Commission acted on requests for rehearing and clarification of the April 26, 2001 Order on June 19, 2001, modifying and expanding the mitigation plan, effective June 20, 2001.)

tariffs.[2] In addition, we also direct the ALJ to hear evidence and render findings and conclusions quantifying the full extent to which the Identified Entities may have been unjustly enriched as a result of their conduct. The ALJ may recommend the monetary remedy of disgorgement of unjust profits and any other additional, appropriate non-monetary remedies.[3] For example, the ALJ may identify non-monetary remedies such as revocation of an Identified Entity's market-based rate authority and revisions to an Identified Entity's code of conduct if the ALJ finds such remedies appropriate.

3. Further, this order finds that certain activities allegedly engaged in by the Identified Entities constituted Gaming Practices, but the circumstances in which they engaged in such activities do not warrant disgorgement of unjust profits. This order also finds that certain activities identified below (California Practices) allegedly engaged in by the Identified Entities do not constitute tariff violations; instead, many were legitimate transactions, which, while they have the superficial appearance of gaming, were not manipulative. This order also recognizes that some of the characteristics that were used to identify potential Gaming Practices may also be present in certain transactions that were not actually Gaming Practices. As a result, the Identified Entities will have an opportunity to submit evidence to the ALJ that the transactions were not Gaming Practices.

4. This order benefits customers by establishing procedures to address activities inconsistent with the ISO and PX tariffs during the period January 1, 2000 to June 20, 2001, consistent with due process.

II. Background

5. By order issued on February 13, 2002, in Docket No. PA02–2–000, the Commission directed a Staff investigation into whether any entity manipulated prices in electricity or natural gas markets in the West or otherwise exercised undue influence over wholesale electricity prices in the West since January 1, 2000.[4]

6. Pursuant to the directive of the February 13, 2002 Order, Staff undertook a comprehensive fact-finding investigation, encompassing both data gathering and data analysis of physical and financial transactions in and out of the California bulk power marketplace and related markets during 2000–2001. Staff's investigation has included a review of a wide variety of factors and behaviors that may have influenced electric and natural gas prices in the West over this period.

7. In August 2002, Staff released its Initial Report on potential manipulation of electric and natural gas prices in these markets, in which it concluded certain conduct was gaming while other practices were legitimate practices.[5] The Initial Report noted that data requests were sent to over 130 sellers of wholesale electricity; entities from all sectors of the industry may have engaged in such trading practices. (Based on the analysis in the Initial Report, the ISO subsequently designed market screens in an effort to review its transaction data and identify potential transactions with characteristics indicative of these trading practices, including the practices that were identified by Staff as legitimate practices; the ISO's results are discussed below.) Staff expressly noted in this Initial Report, however, that its investigation into certain matters was ongoing and that other areas of inquiry and recommendations not addressed in its Initial Report may be included in its Final Report.[6] The Staff Final Report on its fact-finding investigation was publicly released on March 26, 2003.[7]

8. Since 1998, the ISO and PX tariffs have contained provisions that identify and prohibit ''gaming'' and ''anomalous market behavior'' in the sale of electric power.[8] As explained in more detail below, the ISO tariff, through the ISO's Market Monitoring and Information Protocol (MMIP), defines gaming, in part, as ''taking unfair advantage of the rules and procedures set forth in the PX or ISO tariffs, Protocols or Activity Rules * * * to the detriment of the efficiency of, and of consumers in, the

[2] As discussed below, we will also direct the ISO to provide the Identified Entities with certain transaction data that it relied upon in its study which is discussed below, and contemporaneously file that data with the Commission.

[3] This potential disgorgement would apply to the period January 1, 2000 to June 20, 2001 and would be in addition to any refunds owed for the period after October 2, 2000 in the California Refund Proceeding. By order issued on August 23, 2000, the Commission, among other things, established a refund effective date of October 29, 2000, 60 days after the date of publication in the **Federal Register** of the Commission's intent to institute an investigation. *San Diego Gas & Electric Co.* v. *Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al.*, 92 FERC ¶ 61,172 (2000) (August 23, 2000 Order). By order issued on November 1, 2000 in the same proceeding, the Commission granted rehearing in part of the August 23, 2000 Order by changing the refund effective date from 60 days after publication of notice in the **Federal Register** (October 29, 2000) to 60 days after the date of SDG&E's complaint (October 2, 2000). San Diego Gas & Electric Co., *et al.*, 93 FERC ¶ 61,121 at 61,370 (2000) (November 1, 2000 Order), *order on reh'g,* 97 FERC ¶ 61,275 (2001) (December 19, 2001 Order) (denying rehearing of the November 1, 2000 Order with respect to the October 2, 2000 refund effective date). In a December 15, 2000 order, the Commission found that the spot markets operated by the ISO and PX were dysfunctional. San Diego Gas & Electric Co., *et al.*, 93 FERC ¶ 61,294 (2000) (December 15, 2000 Order).

[4] Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002) (February 13, 2002 Order). The February 13, 2002 Order, of course, was not the beginning point of our investigation into the justness and reasonableness of the rates of public utility sellers into the ISO and PX markets. For a general recitation of this procedural history, including the series of events and circumstances giving rise to the California energy crisis, *see* December 19, 2001 Order, 97 FERC ¶ 61,275 (2001).

[5] Initial Report on Company-Specific Separate Proceeding and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000, issued in August 2002.

[6] In the Initial Report, Staff also recommended that the Commission initiate FPA section 206 proceedings against Enron and three of its trading partners. *See* El Paso Electric Co., *et al.*, 100 FERC ¶ 61,188 (2002) (El Paso Electric); Portland General Electric Co. and Enron Power Marketing, Inc., 100 FERC ¶ 61,186 (2002) (Portland); Avista Corporation, *et al.*,100 FERC ¶ 61,187 (2002) (Avista Corp.). Those cases are in various stages of progress, with full or partial settlements having been proposed in some.

A settlement agreement between Trial Staff and Avista Corporation was filed on January 30, 2003 in Avista Corp. Comments in opposition to the agreement were filed on February 19, 2003, by the City of Tacoma, Washington and the California Attorney General. On May 15, 2003, Trial Staff amended its study in support of the settlement agreement and requested that the agreement be certified to the Commission. Additional comments were filed by Tacoma and California on May 27, 2003, with reply comments filed by Trial Staff and Avista Corporation. The settlement agreement is awaiting a determination by the Chief Judge on whether it should be certified. Moreover, on April 9, 2003, the Chief Judge issued an order in Avista Corp. in which he determined that the settlement or hearing in that proceeding will cover all issues raised by the Staff Final Report. Avista Corp. and Avista Energy Inc., Order of the Chief Judge Confirming Rulings Made at Prehearing Conference and Establishing Further Procedures, Docket No. EL02–115–000 (issued April 9, 2003). Therefore, this order does not address Avista Corp.

In the El Paso Electric proceeding, on May 28, 2003, the judge certified an uncontested settlement to the Commission with a recommendation that it be accepted. El Paso Electric Company, *et al.*, 103 FERC ¶ 63,036 (2003). Accordingly, this order does not address El Paso Electric.

Further, this order only addresses issues that are not being litigated in the on-going Portland proceeding.

[7] Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000 (March 26, 2003) (Staff Final Report). The Staff Final Report is available on the Commission's Web site at *http://www.ferc.gov/western*.

[8] *See* California Independent System Operator Corp., 82 FERC ¶ 61,327 at 62,291 (1998); California Power Exchange Corp., 82 FERC ¶ 61,328 at 62,296 (1998); *cf.* AES Southland, Inc., *et al.*, 94 FERC ¶ 61,248 at 61,873 & nn. 25–27, *order approving stipulation and consent agreement,* 95 FERC ¶ 61,167 (2001).

In relevant part, the terms of the two tariffs, the ISO's tariff and the PX's tariff, are substantially identical. Thus, for convenience, we often refer below only to the ISO's tariff.

ISO Markets.'' [9] The ISO tariff, through the MMIP, defines anomalous market behavior, in part, as ''behavior that departs significantly from the normal behavior in competitive markets that do not require continuing regulation or as behavior leading to unusual or unexplained market outcomes.'' [10] The Staff Final Report, among other things, cites to a study by the ISO,[11] in which the ISO identifies activities that purport to fall within the definitions of gaming and/or anomalous market behavior identified in the ISO tariff, and which occurred during the period January 1, 2000 to June 20, 2001.

9. In addition, on November 20, 2002, the Commission issued an order that allowed parties in Docket Nos. EL00–95–000, EL00–95–048, EL00–98–000 and EL00–98–042 to conduct additional discovery into market manipulation by various sellers during the western power crisis of 2000 and 2001, and specified procedures for adducing this information.[12] The Discovery Order allowed the parties to conduct discovery, review the material and submit directly to the Commission additional evidence and proposed new and/or modified findings of fact based upon proffered evidence that is either indicative or counter-indicative of market manipulation, no later than February 28, 2003.[13] On February 10, 2003, the Commission issued an order affording parties an opportunity to respond to submissions made by adverse parties.[14] The Rehearing Order allowed parties to file reply comments directly with the Commission by March 17, 2003. The Commission in a later order extended the February 28, 2003 deadline to March 3, 2003, and allowed the reply comments to be filed by March 20, 2003.[15] These filings are referred to as the ''100 Days Evidence.'' [16]

10. On March 5, 2003, the Commission issued a notice providing that the Commission intended to release: (1) All documents submitted in Docket No. PA02–2–000, except documents obtained from other Federal agencies in accord with the Federal Records Act, 44 U.S.C. § 3510(b), and (2) all documents submitted in response to the Discovery Order and Rehearing Order.[17] On March 21, 2003, the Commission issued an order directing the release of information no later than March 26, 2003 in accordance with the above notice.[18]

11. Finally, by order issued on April 2, 2003,[19] the Commission provided for the submission of briefs on Commission Staff's interpretation of the MMIP provisions concerning gaming and anomalous market behavior as prohibiting certain practices by market participants. Thirty-three parties filed in response.[20] Their comments are discussed below in the section on the MMIP provisions.

III. Discussion

A. The Commission's Authority in This Case

1. Commission Authority With Respect to the Period Prior to October 2, 2000

12. In our July 25, 2001 order [21] and the November 1, 2000 Order in the California Refund Proceeding, we established a refund effective date (October 2, 2000) concerning the market manipulation allegations at issue in that proceeding, based on the evidence available at that time and the refund limitations set forth in section 206 of the Federal Power Act (FPA).[22] As such, we did not include within the scope of that proceeding, conduct relating to a portion of the period at issue here, *i.e.*, for the period from January 1, 2000 to October 2, 2000. In doing so, however, we noted that the Commission could take action to address earlier periods if, during those earlier periods, a seller did not charge the filed rate or violated tariffs.[23] Thus, for the period prior to the October 2, 2000 refund effective date, the Commission can order disgorgement of monies above the post-October 2, 2000 refunds ordered in the California Refund Proceeding, if we find violations of the ISO and PX tariffs. Further, while refund protection has been in effect for sales in the ISO and PX short-term energy markets since October 2, 2000, the Commission can additionally order disgorgement of unjust profits for tariff violations that occurred after October 2, 2000 (*i.e.*, to June 20, 2001).[24]

2. Commission Authority With Respect to Governmental Entities

13. We note that several of the Identified Entities are governmental entities, subject to the jurisdictional exemption set forth in section 201(f) of the FPA.[25] In the July 25, 2001 Order, as reiterated in the December 19, 2001 Order, the Commission found that refund liability should apply to energy sold in the ISO and PX short-term energy markets, including that sold by governmental entities. Here, as well, we find that the disgorgement of unjust profits for the pre-October 2, 2000 period, should apply to sales made by governmental entities as well as to those sales by the other Identified Entities.

14. In the July 25, 2001 Order, the Commission explained that its jurisdiction attached to ''the subject matter of the affected transactions: wholesale sales of electric energy in interstate commerce through a Commission-regulated centralized

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[9] ISO's MMIP 2.1.3. As explained below, the MMIP is part of the ISO tariff.

[10] MMIP 2.1.1.

[11] *See* Department of Market Analysis, California ISO, Analysis of Trading and Scheduling Strategies Described in Enron Memos, (October 4, 2002), publicly released on January 6, 2003, *available at <http://www.caiso.com/docs/2003/03/26/2003032613435514289.pdf>* (last viewed June 9, 2003); Addendum to October 4, 2002 Report on Analysis of Trading and Scheduling Strategies Described in Enron Memos: Revised Results for Analysis of Potential Circular Schedules (''Death Star'' Scheduling Strategy), (January 17, 2003), available at <*http://www.caiso.com/docs/2003/03/26/2003032613593115924.pdf*> (last viewed June 9, 2003); and Supplemental Analysis of Trading and Scheduling Strategies Described in Enron Memos, (June 2003), available at <*http://www.caiso.com/docs/2003/06/18/2003061806053424839.pdf*> (last viewed June 18, 2003), (collectively, ISO Report). The ISO released its June 2003 Supplemental Analysis after the issuance of the Staff Final Report. The Commission has reviewed the ISO's Supplemental Analysis.

[12] *San Diego Gas & Elec. Co.* v. *Sellers of Energy and Ancillary Serv., et al.*, 101 FERC ¶ 61,186 (2002) (Discovery Order).

[13] *Id.* at P 27.

[14] San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv., *et al.*, 102 FERC ¶ 61,164 (2003), *reh'g pending* (Rehearing Order).

On the same day, the Commission expanded the coverage of these responses to include the proceeding in Docket No. EL01–10–007. *See Puget Sound Energy, Inc.*, et al. v. *All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement*, 102 FERC ¶ 61,163 (2003).

[15] *San Diego Gas & Elec. Co.* v. *Sellers of Energy and Ancillary Serv., et al.*, 102 FERC ¶ 61,194 (2003) (February 24, 2003 Order).

[16] Attachment E to this order lists the parties that submitted 100 Days Evidence. Much of the 100 Days Evidence consisted of sworn testimony and affidavits.

[17] Notice of Intent to Release Information and Opportunity to Comment, 68 Fed. Reg. 11,821 (March 12, 2003).

[18] Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, *et al.*, 102 FERC ¶ 61,311 (2003).

[19] Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices, 103 FERC ¶ 61,016 (2003).

[20] These commenters are listed in Attachment F.

[21] *San Diego Gas & Elect. Co.* v. *Sellers of Energy and Ancillary Serv., et al.*, 96 FERC ¶ 61,120 at 61,506–11 (July 25, 2001 Order), order on clarification and reh'g, 97 FERC ¶ 61,275 (2001).

[22] 16 U.S.C. § 824e (2000).

[23] 96 FERC at 61,507–08, citing Washington Water Power Co., 83 FERC ¶ 61,282 (1998). *See also Gynsburg* v. *Rocky Mountain Natural Gas Co.,* 90 FERC ¶ 61,247 at 61,825–26, *reh'g denied,* 93 FERC ¶ 61,180 at 61,587 (2000); Public Service Co. of Colorado, 85 FERC ¶ 61,146 at 61,588 (1998).

[24] See December 19, 2001 Order, 97 FERC at 61,239 (the Commission can order equitable remedies, such as disgorgement, for unjust enrichment); *accord.* AES Southland, Inc. and Williams Energy Marketing & Trading Corp., 95 FERC ¶ 61,167 at 61,538 (2001); *Transcontinental Gas Pipe Line Corp.* v. *FERC,* 998 F.2d 1313 (5th Cir. 1993).

[25] *See* 16 U.S.C. 824(f) (2000).

clearinghouse that set a market clearing price for all wholesale seller participants, including [governmental entities]'' and thus that jurisdiction may properly be asserted over sales by governmental entities.[26] The Commission continued:

Here, the central transactions, wholesale sales of energy in interstate commerce, were governed by FERC-approved rules and a FERC-jurisdictional ISO and PX * * * [and] thus fell within FERC's jurisdiction regardless of the jurisdictional nature of the sellers or buyers. Further, the centralized wholesale spot electricity markets operated by the California ISO and PX were established (and have been modified) subject to FERC review and approval. Because the market did not exist prior to FERC authorization, all those who participated in the market had to recognize the controlling weight of FERC authority. Moreover, it is fair that all those who benefitted from this market also bear responsibility for remedying any potential unlawful transactions that might have occurred in the market.

* * * * *

Consequently, if the price for a specific sale is found to be unjust and unreasonable, then all sellers who obtained that price received an unjust and unreasonable rate. To the extent the Commission determines refunds are an appropriate remedy for that sale, consumers can only be made whole by refunds from all sellers who received the excessive price. As [governmental entity] sellers of energy and ancillary services accounted for up to 30 percent of all sales in the California centralized ISO and PX spot markets, excluding them from a potential refund remedy could have a serious detrimental effect on consumers.[27]

15. This rationale applies equally in the context of violations of MMIP provisions that prohibit gaming and/or anomalous market behavior, as such provisions apply to all transactions in the California market.

B. The MMIP's Provisions Concerning Gaming and/or Anomalous Market Behavior

1. Provisions Cited in the Staff Final Report

16. Concerning the Commission's remedial authority with respect to the Identified Entities' alleged practices, the Staff Final Report notes that the MMIP is one of several protocols that the Commission required the ISO and PX to include as part of their filed rate schedules.[28] The Staff Final Report also cites the underlying purposes of the MMIP,[29]discussed in MMIP 1.1 (Objectives) which provides in pertinent part:

This Protocol sets forth the workplan and, where applicable, the rules under which the ISO will monitor the ISO Markets to identify abuses of market power, to ensure to the extent possible the efficient working of the ISO Markets immediately upon commencement of their operation, and to provide for their protection from abuses of market power in both the short term and the long term, and from other abuses that have the potential to undermine their effective functioning or overall efficiency in accordance with section 16.3 of the ISO Tariff.[30]

17. The Staff Final Report also cites part 2 of the MMIP which specifies what are termed ''Practices Subject to Scrutiny.'' Among those practices are two that the Staff Final Report identifies as being of particular concern to the Commission; the first is ''gaming,'' and the second is ''anomalous market behavior.'' [31] Gaming is defined at section 2.1.3 of the ISO's MMIP as follows:

[T]aking unfair advantage of the rules and procedures set forth in the PX or ISO Tariffs, Protocols or Activity Rules, or of transmission constraints in periods in which exist substantial Congestion, to the detriment of the efficiency of, and of consumers in, the ISO Markets. ''Gaming'' may also include taking undue advantage of other conditions that may affect the availability of transmission and generation capacity, such as loop flow, facility outages, level of hydropower output or seasonal limits on energy imports from out-of-state, or actions or behaviors that may otherwise render the system and the ISO Markets vulnerable to price manipulation to the detriment of their efficiency.[32]

18. Anomalous market behavior is defined at Section 2.1.1 of the ISO's MMIP:

''Anomalous market behavior'' * * * is * * * behavior that departs significantly from the normal behavior in competitive markets that do not require continuing regulation or as behavior leading to unusual or unexplained market outcomes. Evidence of such behavior may be derived from a number of circumstances, including: withholding of Generation capacity under circumstances in which it would normally be offered in a competitive market; unexplained or unusual redeclarations of availability by Generators; unusual trades or transactions; pricing and bidding patterns that are inconsistent with prevailing supply and demand conditions, *e.g.*, prices and bids that appear consistently excessive for or otherwise inconsistent with such conditions; and unusual activity or circumstances relating to imports from or exports to other markets or exchanges.[33]

2. The Staff Final Report's Interpretation of the MMIP [34]

19. In brief, the Staff Final Report interprets the MMIP as ''rules of the road'' which the Commission may enforce, and as barring the kinds of practices at issue here. The Staff Final Report explains that the MMIP enumerates objectionable practices, the MMIP authorizes the ISO to impose ''sanctions and penalties'' or to refer matters to the Commission for appropriate sanctions or penalties,[35] and the MMIP was part of the ISO and PX tariffs on file with the Commission during the relevant period.[36] Accordingly, entities that transact through the ISO or PX and engage in such enumerated practices are in violation of filed tariffs. Further, the Staff Final Report concludes that various practices were violations of the MMIP and thus violations of the ISO's and PX's filed tariffs.

3. Comments Regarding the Staff Final Report's Interpretation of the MMIP

a. Supporting Comments

20. Several commenters supported the Commission Staff's interpretation of the

[26] July 25, 2001 Order, 96 FERC at 61,512; *accord id.* at 61,511–13.

[27] *Id.* at 61,513 (footnote omitted); *accord id.* at 61,511–13. On rehearing, the Commission reaffirmed its jurisdiction over these transactions. December 19, 2001 Order, 97 FERC at 62,180–87.

[28] As further explained below, the MMIP has been part of the ISO's and PX filed tariffs since 1998.

[29] Staff Final Report, ch. VI at 6–7.

[30] MMIP 1.1.

[31] Staff Final Report, ch. VI at 7–10.

[32] MMIP 2.1.3.

[33] MMIP 2.1.1.5 further provides that: The Market Surveillance Unit shall evaluate, on an ongoing basis, whether the continued or persistent presence of such circumstances indicates the presence of behavior that is designed to or has the potential to distort the operation and efficient functioning of a competitive market, *e.g.*, the strategic withholding and redeclaring of capacity, and whether it indicates the presence and exercise of market power or of other unacceptable practices.

[34] *See* Staff Final Report, ch. VI at 8–10.

[35] MMIP 7.3.

[36] As the Staff Final Report notes, and as discussed in more detail below, the MMIP has been part of the ISO and PX tariffs on file with the Commission since 1998, which encompasses the relevant period of January 1, 2000 through June 20, 2001.

MMIP.[37] They argue that: (1) The MMIP is on file with the Commission as part of a filed tariff, and has been for some time, and thus can be enforced by the Commission; (2) the MMIP applies to all market participants, and is expressly intended to identify abuses and to provide for protection from such abuses; (3) the MMIP provides that the practices that are expressly subject to scrutiny are gaming and anomalous market behavior, and each is defined in some detail; (4) while the MMIP does not expressly prohibit such Gaming Practices as ''ricochet'' or ''get shorty,'' such a standard would require a level of detail that would be impossible to achieve, and it would require anticipating all of the myriad ways that could be dreamed up to ''game'' the markets, and to spell them all out in the MMIP; (5) it is hard to conceive that market participants as sophisticated as those here did not realize that the kind of trading practices at issue here were inappropriate; and (6) as part of a filed tariff, the MMIP ultimately is for the Commission to interpret and enforce, and the MMIP itself recognizes that the Commission is the ultimate enforcement authority.

b. Opposing Comments

21. Several parties filed comments opposing Commission Staff's interpretation of the MMIP.[38] They argue that: (1) The MMIP was intended to provide direction to the ISO and not be a standard by which the Commission prosecuted market participants' conduct; (2) the MMIP does not expressly bar any trading practices; and (3) the MMIP does not identify with precision the particular strategies that are subject to scrutiny, and thus, it is too vague to serve as a standard by which to judge market participants' conduct. They argue that the Commission cannot hold market participants responsible in these circumstances, when they have not had fair notice that the trading practices at issue here are prohibited. Further, they contend that there is extrinsic evidence indicating that market participants, particularly including the ISO itself, did not view the MMIP as a bar to the kind of trading practices at issue here or as a basis for ordering disgorgement of unjust profits. In this respect, the parties argue that the Commission to date has never indicated that it viewed the MMIP as a bar to such conduct; its orders, to the extent that they have touched on such matters at all, have, in fact, implied the contrary, according to the opposing commenters. They also suggest that if the Commission initiates an investigation, it would discourage new investment.

c. Other Comments

22. The California Parties also argue that other tariff provisions may have been violated, citing the following tariff provisions from the ISO Tariff: (1) Section 5.5.1 (Planned Maintenance); (2) Section 5.5.3 (Forced Outages); (3) Section 5.3 (Identification of Generating Units); (4) Section 5.4 (Western Systems Coordinating Council (WSCC) Requirements); (5) Section 2.2.7.2 (Submitting Balanced Schedules); (6) Section 2.5.22.11 (Failure to Conform to Dispatch Instructions); and (7) Section 20.3 (Confidential Information).

3. Commission Determination

23. The MMIP puts market participants on notice regarding their rights and obligations in the marketplace. It serves as the rules of the road for market participants. It also contemplates that these rules will be enforced by the Market Surveillance Unit, in the form of monitoring and reporting, or by the appropriate body or bodies (including this Commission), in the form of corrective actions.[39] While the Commission's role in this regard may be triggered by the referral procedures outlined in the MMIP, the Commission also possesses the authority to enforce a filed tariff even in the absence of a referral.[40] We agree with the Staff Final Report that one key function of the MMIP is to put market participants on notice as to the rules of the road for market participants, so that the markets operated by the ISO are free from abusive conduct and may function as efficiently and competitively as possible. The Staff Final Report finds, and again we agree, that market participants cannot reasonably argue that they were *not* on notice that conduct such as the Gaming Practices discussed below would be a violation of the ISO and PX tariffs. In short, the key function of the MMIP is to put market participants on notice of what practices would be subject to monitoring and, potentially, corrective or enforcement action, by either the ISO in the first instance or by the Commission, whose role includes enforcing the terms and conditions of filed rate schedules. Accordingly, it is appropriate for us to institute this proceeding.

24. MMIP 2.3 and its several subparts address how the ISO, including the Market Surveillance Unit, is to respond to market participants engaging in any of the suspect practices delineated in the MMIP. While the MMIP outlines intermediate steps (such as arranging for alternative dispute resolution or proposing language changes to the tariff), ultimately the MMIP directs the Market Surveillance Unit to refer matters to this Commission for enforcement.[41] The MMIP contemplates that, while the ISO may try to correct misconduct on its own, the Commission is to be ''the court of last resort'' for misconduct committed by market participants, including the gaming and/or anomalous market behavior misconduct defined in the MMIP. While part 2 of the MMIP enumerates suspect practices, MMIP 7.3 authorizes the ISO to impose ''sanctions and penalties'' or, as particularly relevant here, to refer matters to the Commission for appropriate sanctions or penalties.

25. We agree with the Staff Final Report that if entities are found to have engaged in the identified misconduct, they will have violated the ISO's and PX's filed tariffs even if such formal procedures as referral outlined in the MMIP did not occur. The Commission can enforce a filed tariff even when there are processes in that tariff which, had they been used, would have assisted the Commission. Ultimately, the Commission can enforce a filed tariff with or without the assistance of a complaint or a referral.[42]

26. In this regard, we note that the ISO and PX each initially submitted its MMIP (along with other protocols), for informational purposes only, on October 31, 1997. The Commission, however, found that the protocols, including the MMIP, ''govern a wide range of matters which traditionally and typically appear in agreements that should be filed with and approved by the Commission.'' [43] The Commission accepted the protocols, including the MMIP, for filing, and directed the ISO and PX each to post the protocols on its Internet site and to file its complete protocols pursuant to Section 205 of the FPA within 60 days of the ISO's and PX's Operations Date (that date ultimately was April 1,

[37] *E.g.,* the California Parties, which include the California Attorney General and the California Public Utilities Commission, among others.

[38] *E.g.,* California Generators (Mirant, Dynegy, Williams), Competitive Supplier Group (Aquila, Aquila Merchant Services, Arizona Public Service Company, Avista Energy, Constellation Power Source, Coral Power, El Paso Merchant Energy, IDACORP Energy, Idaho Power Company, Pinnacle West Capital Corporation, Portland General Electric, Puget Sound Energy, and Sempra Energy Trading Corp.), Enron, and Reliant.

[39] Sections 2.3, 3.3.4 and 7.3 of the MMIP outline the procedures to be followed by the ISO and the PX when a market participant is found to have engaged in any of the suspect practices delineated in the MMIP.

[40] 16 U.S.C. §§ 824d, 824e, 825h (2000).

[41] MMIP 3.3.4.

[42] 16 U.S.C. 824d, 824e (2000).

[43] Pacific Gas and Electric Co., *et al.*, 81 FERC ¶ 61,320 at 62,471 (1997).

1998).[44] Accordingly, the MMIP has been part of the ISO's and PX's filed tariffs since 1998, which includes the period January 1, 2000 to June 20, 2001 at issue here.

27. With respect to tariff provisions besides the MMIP cited by the California Parties: (1) The WSCC requirements cited by the California Parties make no reference to gaming strategies or anomalous market behavior (as does the MMIP), and therefore, those provisions do not provide a basis for finding gaming and/or anomalous market behavior; and (2) conduct involving arbitrage, underscheduling and confidentiality of certain data is addressed below in the discussion of Gaming Practices and California Practices. We are also currently investigating alleged violations related to physical withholding.

C. Overview of PX and ISO Operations

28. The Staff Final Report provides an overview of the ISO and PX operations and trading rules in order to put the alleged practices in the context of Western energy markets.[45] This overview is recited below.

29. The ISO operates much of the transmission grid in California and is responsible for real-time operations, such as continually balancing generation and load and managing congestion on the transmission system it controls. In California, a certified scheduling coordinator is the intermediary between the ISO and the ultimate customer. Under California's restructuring legislation, the PX was created primarily to operate two markets in which energy was traded on an hourly basis. These were the day-ahead and day-of markets. These markets established a single clearing price for each hour across the entire ISO control area, provided there were no transmission constraints. Where transmission congestion existed, a separate clearing price was established for each transmission constrained area or zone in California. Each zonal clearing price was based on adjustment bids submitted by sellers and buyers. The adjustment bids represented the value to an entity of increasing or decreasing (*i.e.*, adjusting) its use of the system. In essence, this is a redispatch of the system to deal with congestion.[46]

30. The ISO operates a variety of markets in order to procure the resources necessary to reliably operate the transmission system, including a day-ahead market and an hour-ahead market for relieving transmission congestion and an energy market to continuously balance the system's energy needs in real time. The latter real-time market is the final energy market to clear chronologically, after all other markets in the region clear. Bilateral spot markets at trading hubs outside California generally operated in the time period between the close of the PX market and the ISO real-time market.[47]

31. As the Staff Final Report notes, understanding the interaction of the PX and ISO spot markets with all their complexities, together with the different market operations outside of California, is crucial to understanding and analyzing the impact of the various conduct discussed below. An example of these complexities is the transmission congestion management system. A transmission path is ''congested'' when total schedules exceed the available transmission capacity of the facilities. The ISO used, as suggested above, a zone-based approach to alleviate congestion. Sellers and buyers submitted adjustment bids identifying the prices they were willing to use to increase or decrease their generation on demand to relieve congestion in a particular zone. However, the software used by the ISO to evaluate adjustment bids did not accept prices that were higher than the ISO price cap. These and other complexities created an opportunity for the market participants to engage in the conduct described below.[48]

32. In addition, it is important to remember that California's restructuring plan required the three California public utilities (Southern California Edison Company (SoCal Edison), San Diego Gas & Electric Company (SDG&E), and Pacific Gas and Electric Company (PG&E)) to sell all of their generation resources into the PX and to buy all of their energy needs from the PX. This made the PX by far the largest scheduling coordinator in California, representing at times close to 90 percent of the load served by the ISO grid. This requirement that the three public utilities exclusively use the PX was critical in the restructuring program, since this was how the three public utilities were to calculate savings from using the new market structure and apply those savings to recover their stranded costs.[49]

33. Thus, under the California restructuring rules, the three California public utilities were both buyers and sellers in the PX. The prices paid for buying back their own resources through the PX served to value those resources for stranded cost purposes. As long as the three public utilities paid less than the frozen retail rates, they used the difference to write off stranded costs. This formula broke down, however, when the public utilities had to buy back their resources at more than the frozen retail rates.[50]

D. Gaming Practices and California Practices

34. Since the inception of the Commission's investigation into whether any entity manipulated prices in the electricity and gas markets in the West and the release of the first Enron memorandum in May 2002 discussing its trading strategies, there have been a multitude of studies and reports written about the alleged inappropriate conduct in California by market participants during 2000 and 2001. In addition to the Staff Final Report that addresses these issues, we have reviewed the ISO Report and the several studies and testimony by witnesses submitted in the 100 Days Evidence. Most notable among the testimony submitted with respect to alleging gaming conduct by market participants are the testimony and studies conducted by Dr. Peter Fox-Penner.[51]

35. As a result of our review and analysis of this material, the Commission has determined that some of these alleged gaming practices violated the MMIP. As to those practices that violated the MMIP (hereafter collectively referred to as the Gaming Practices), we found two categories of violations: (1) Gaming Practices that violated the MMIP and for which we are seeking disgorgement of all unjust profits received as a result of those violations; and (2) Gaming Practices that violated the MMIP, but for which there were no unjust profits earned or other countervailing and mitigating circumstances existed that caused the market participants to engage in the

[44] *Id.* The ISO (in Docket No. EC96–19–029, *et al.*) and PX (in Docket No. EC96–19–28, *et al.*) each made that compliance filing on June 1, 1998.

[45] *See* Staff Final Report, ch. VI at 4–6.

[46] For a more detailed description of the day-ahead auction process, *see* the Staff Final Report, ch. VI at 5.

[47] *Id.* at 5–6.

[48] *Id.* at 6.

[49] *Id.* at 4.

[50] *Id.* at 4–5. As noted in the Commission's December 15, 2000 Order, 93 FERC at 62,002 & n.54, stranded cost estimates showed that by then PG&E had collected $8.3 billion, and SoCal Edison had collected $9.3 billion; SDG&E had fully recovered its stranded costs earlier in 2000. Staff Final Report, ch. VI at 5.

[51] *See* Prepared Testimony of Dr. Peter Fox-Penner on Behalf of California Parties, Exhibit No. CA–1, and Appendices to Prepared Testimony of Dr. Peter Fox-Penner on Behalf of California Parties, Exhibit No. CA–2 attached to California Parties' Supplemental Evidence Filing in Docket No. EL00–95–075, *et al.* (filed March 3, 2003).

Gaming Practices such that it would not be just for the Commission to seek the disgorgement of unjust profits.

36. We have determined that certain of the market participants' practices did not violate the MMIP, and we are not pursuing market participants for having engaged in such activities (hereafter collectively referred to as the California Practices). Rather, we find that the California Practices did not violate the ISO tariff or any rule, and were recognized and widely accepted as appropriate arbitrage activity.

1. Gaming Practices

a. False Import

37. This practice, which is also known as ''Ricochet'' or ''Megawatt Laundering,'' took advantage of the price differentials that existed between the day-ahead or day-of markets and out-of-market sales in the real-time market. A market participant made arrangements to export power purchased in the California day-ahead or day-of markets to an entity outside the state and to repurchase the power from the out-of-state entity, for which the out-of-state entity received a fee. The ''imported'' power was then sold in the California real-time market at a price above the cap.

38. The essence of the False Import practice was to ''park'' day-ahead or day-of California energy with a company outside of California, buy it back for a small fee and then sell it to the ISO as ''imported'' out-of-market power. When power was parked under this practice, no power actually left the state of California. The reason for creating this fictional import was to take advantage of the fact that the ISO was making out-of-market purchases that were not subject to the price cap during real time whenever there was insufficient supply bid into its market.[52] The ISO buyers responsible for obtaining the energy needed in the real-time market were willing to pay a price above the cap for energy imported from outside of California and accepted offers from sellers engaging in the False Import practice.

39. Those market participants who engaged in the False Import practice violated the MMIP by unfairly taking advantage[53] of the rules permitting energy to be purchased at prices above the cap in out-of-market purchases during real time and the ISO's practice of permitting such uncapped purchases for imported power. More precisely, the market participants engaging in False Import deceived the ISO by falsely representing that their available power had been imported in order to receive a price above the cap. In fact, however, the generation was California generation, and no power had left the state in the fictional export-import parking transaction.

40. Based on the ISO Report and studies by Dr. Fox-Penner,[54] the following parties may have engaged in the False Import Practice in violation of the MMIP and unjustly received prices in excess of the cap for energy that was falsely represented as being imported energy: (1) Aquila, Inc.; (2) Arizona Public Service Company; (3) Bonneville Power Administration; etc., as set forth in Attachment A to this Order.[55]

b. Congestion-Related Practices.

41. According to the ISO rules, market participants received congestion relief payments for relieving flows in the direction of congestion or increasing counterflows in the opposite direction. There were four practices that market participants engaged in that involved false scheduling of load or counterflow energy that appeared to relieve congestion in real time so that they could receive congestion payments.[56]

42. The first such Congestion-Related practice is referred to as Cutting Non-firm, also sometimes known as Non-firm Export. This practice involved the scheduling of non-firm power by a market participant that did not intend to deliver or cannot deliver the power. Upon receipt of the congestion payment for cutting the schedule, the market participant then canceled the non-firm power after the hour-ahead market closed but kept the congestion payment. No power was transmitted and no congestion was relieved, but the market participant was paid for congestion relief. In some instances, the market participant may have submitted a schedule for non-firm power that it, in fact, had not acquired.

43. The second Congestion-Related practice is Circular Scheduling, also sometimes referred to as ''Death Star.'' The Circular Scheduling practice involved the market participant scheduling a counterflow in order to receive a congestion relief payment. In conjunction with the counterflow, the market participant scheduled a series of transactions that included both energy imports and exports into and out of the ISO control area and a transaction outside the ISO control area in the opposite direction of the counterflow back to the original place of origin. With the same amount of power scheduled back to the point of origin, however, power did not actually flow and congestion was not relieved. Circular Scheduling was profitable as long as the congestion relief payments were greater than the cost of scheduled transmission.

44. The third Congestion-Related practice was Scheduling Counterflows on Out-of-Service Lines, also sometimes referred to as ''Wheel Out.'' This practice involved a market participant submitting a schedule across an intertie line at the ISO border that was known to be out of service and had been derated to zero capacity, thus creating artificial congestion. The market participant would then schedule a counterflow export, a ''wheel out,'' and be paid for congestion relief in the day-ahead or hour-ahead market. However, because the line was completely constrained, the initial schedule was certain to be cut by the ISO in real time and the market participant would receive a congestion payment for energy it did not actually supply.

45. The fourth Congestion-Related practice, known as ''Load Shift,'' involved a market participant

[52] ''Out-of-market purchases'' refers to all generation purchased by the ISO that was not bid into the market or was bid at a price above the effective price cap. Out-of-market purchases were especially frequent prior to the implementation of the ''must offer'' requirement effective on May 29, 2001, which mandates that all generators with participating generator agreements with the ISO provide available generation to the ISO unless the ISO grants a waiver. *See* San Diego Gas & Electric Co., 95 FERC ¶ 61,115 (implementing the must offer requirement), *clarified,* 95 FERC ¶ 61,275 (2001).

[53] *See* MMIP 2.1.3.

[54] As discussed below in section E, because the ISO Report and Dr. Fox-Penner's studies were broadly inclusive, we recognize that some of the transactions identified in those reports may have been legitimate transactions and not Gaming Practices.

[55] The monetary remedy of disgorgement of unjust profits for this particular Gaming Practice would be imposed only until such time as the mitigated market clearing price was put in place for transactions, *i.e.*, on June 21, 2001. Furthermore, during the period covered by the refund period (October 2, 2000–June 21, 2001), *see supra* note 3, all spot market sales through the PX in the day ahead market are mitigated as are all transactions with the ISO in the real time market. Therefore, both the energy price for the export and the import are mitigated during this period. Accordingly, disgorgement for this strategy will apply to only transactions between May 2000 and the start of the refund period on October 2, 2000.

[56] As noted above, *supra* notes 1 and 3, June 20, 2001 has been selected as the end date of the relevant period in this proceeding. While the mitigation plan, which became effective on that date, was primarily intended to control the real-time energy market, it also had a disciplining effect on congestion costs and eliminated the opportunity to profit from Gaming Practices. The ISO Market Analysis Report for June 2001 shows that the average price of real-time electricity in June decreased 62 percent to $104/MWh from the May 2001 average of $275/MWh and total congestion costs for June 2001 were $0.5 million, down from $7 million in May 2001. A. Sheffrin, Market Analysis Report for June 2001, (July 20, 2001), *available at <http://www.caiso.com/docs/2001/07/20/20010720173331910 5.pdf>*.

underscheduling load in one zone in California and overscheduling load in another, thereby increasing congestion in the direction of the overscheduled zone. Congestion ''relief'' occurred when the market participant later adjusted the two schedules to reflect actual expected loads. This adjustment created a counterflow toward the underscheduled zone, earning the market participant a congestion relief payment from the ISO. The market participant had to own Firm Transmission Rights (FTRs) in the direction of the overscheduled zone to cover its exposure to ISO congestion charges, but any of the FTRs that it did not use may have earned artificially high FTR payments from the ISO.

46. Each of the four Congestion-Related practices violated the MMIP because the market participants submitted false schedules to the ISO. In the cases of Cutting Non-firm, Circular Scheduling, and Scheduling Counterflows on Out-of-Service Lines, the market participants fraudulently received congestion relief payments for energy that was never provided and did not relieve congestion. Similarly, market participants who engaged in the Load Shift practice received congestion payments for their FTRs as a result of the very congestion that they created. As a result of these false representations, the market participants that engaged in these Congestion-Related practices unfairly took advantage of the ISO rules regarding payment for congestion relief.

47. Based on the ISO Report and studies by Dr. Fox-Penner, the following parties may have engaged in one or more of these four Congestion-Related Practices in violation of MMIP and unjustly received congestion payments: (1) American Electric Power Service Corp.; (2) Aquila, Inc.; (3) Duke Energy Trading and Marketing Company; *etc.,* as set forth in Attachment B to this Order.

c. Ancillary Services-Related Practices.

48. There are three different practices that market participants engaged in that involved selling ancillary services, also sometimes collectively referred to as ''Get Shorty.'' Two of these we consider to be Gaming Practices and violations of the MMIP and are discussed here. The third, we determine to be a form of legitimate arbitrage and is discussed below, in the section addressing the California Practices.

49. The first Ancillary Services-Related practice we refer to as Paper Trading. This practice involved selling ancillary services in the day-ahead market even though the market participant did not have the required resources available to provide the ancillary services. The market participant then bought back these ancillary services in the hour-ahead market at a lower price.

50. The second Ancillary Services-Related practice we refer to as Double Selling. This practice involved selling ancillary services in the day-ahead market from resources that were initially available, but later selling those same resources as energy in the hour-ahead or real-time markets.

51. Market participants that engaged in Paper Trading and/or Double Selling violated the MMIP since they unfairly took advantage [57] of the market rules by using false representations and/or receiving payments for services that they did not provide. With respect to Paper Trading, the ISO's tariff requires that any bid for the provision of ancillary services specify the generating unit, system unit, load or system resource which will be used to provide the ancillary service. Additionally, a scheduling coordinator must identify the specific operating characteristics of that resource which would qualify it to provide ancillary services.[58] However, market participants engaged in Paper Trading falsely represented that the resources were available to provide ancillary services when they were not actually available. Similarly, with respect to Double Selling, the market participant misled the ISO by selling capacity that it had already committed to reserve as ancillary services, thus making that capacity no longer available in real time if the ISO were to call upon that resource to provide ancillary services. In addition to violating the MMIP, those market participants that engaged in Double Selling also violated Section 2.5.22.11 of ISO tariff.[59]

52. Although the ISO Report includes a list of market participants that may have engaged in Paper Trading, the ISO does not have the information necessary to determine the extent to which the capacity for ancillary services sold in the day-ahead market and then sold back in the hour-ahead was not actually available or could not have been provided. However, in a market notice, dated July 3, 2002, the ISO listed market participants that received payments for ancillary services that were called upon but for which they could not deliver the services.[60] Based on the identification of market participants in the July 3, 2002 market notice as well as the ISO Report, the Commission believes that the following parties may have engaged in Paper Trading in violation of the MMIP and Section 2.5.22.11 of the ISO tariff and unjustly received payments for ancillary services: (1) Arizona Public Service Co.; (2) Automated Power Exchange, Inc.; (3) Bonneville Power Administration; *etc.,* set forth on Attachment C to this Order.

53. Based on the studies by Dr. Fox-Penner, the Commission believes that the following parties may have engaged in Double Selling in violation of MMIP and unjustly received payments for ancillary services: (1) Duke Energy Trading and Marketing Corp.; (2) Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC; (3) Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC; and (4) Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc.; as set forth on Attachment D to this Order.

d. Selling Non-Firm Energy as Firm

54. The practice of Selling Non-Firm Energy as Firm involved Enron [61] buying non-firm energy from outside California and then selling it to the ISO as firm energy. Enron was able to derive an unjust profit from this practice because it avoided the cost of purchasing the operating reserves that are required for firm energy.

55. The practice of Selling Non-Firm Energy as Firm was a flagrant false representation by Enron to the ISO. Thus, it was a violation of the MMIP.

2. Gaming Practices for Which Disgorgement of Unjust Profits Is Not Sought

a. Underscheduling Load.

56. This practice was an effort by the load-serving entities, primarily the three California utilities (PG&E, SoCal Edison, and SDG&E), to reduce the overall price paid for generation. For months they understated their load consistently in

[57] *See* MMIP 2.1.3.

[58] ISO Tariff § 2.5.6.1 (applicable to generation within California); and ISO Tariff §§ 2.5.7.4.2 and 2.5.7.4.3 (applicable to resources outside of California).

[59] Section 2.5.22.11 of the ISO Tariff (Failure To Conform To Dispatch Instructions) requires that resources that have been committed to provide ancillary services for a given period must be available and capable of providing the services for the full duration of the period.

[60] California ISO, Ancillary Services Payments Rescinded Due to Generator Unavailability, Market Notice (July 3, 2002). For the convenience of parties, the ISO's July 3, 2002 market notice is attached as Attachment G to this order.

[61] In the 100 Days Evidence, Seattle alleges that Avista, El Paso, Portland General, PowerEx, and Transalta engaged in all of the Gaming Practices. However, we have seen no evidence that any market participant engaged in Selling Non-Firm Energy as Firm other than Enron.

schedules submitted to the PX in an effort to reduce the amount of generation purchased in the day-ahead market, thereby lowering the price. The remainder of the utilities' generation needs would be purchased in the ISO's capped real-time market.

57. Under the then-existing market rules, the utilities were required to satisfy their need for energy with purchases from the PX and were to bid in their generation in the PX day-ahead market in an amount equal to their load.[62] However, during 2000, in an effort to minimize their energy costs, the three California public utilities began to routinely underschedule their load in the PX day-ahead market. Due to the large size of the three California public utilities, changes in their purchasing strategies had a significant impact on market outcomes, including the market-clearing prices in the PX day-ahead market. By moving a significant amount of their load out of the PX day-ahead market, less supply bids were needed to clear the market which, in turn, resulted in lower market clearing prices in the PX day-ahead market. As a direct result of the underscheduling by the three public utilities in the day-ahead market, however, the ISO had to meet a larger percentage of the load in real time, causing serious operational and reliability problems.

58. Because Underscheduling Load required the utilities to submit false schedules with regard to their loads to the PX, this conduct was certainly troublesome and is not condoned by the Commission.[63] Moreover, it violated the MMIP by unfairly taking advantage of the rules and caused a demonstrable detriment to the efficiency of the market.[64] Although we disapprove of the practice of Underscheduling Load and we have the authority to order disgorgement of unjust profits, there are no profits to disgorge since this was a price-reducing purchasing strategy.

b. Overscheduling Load.

59. The practice of Overscheduling Load involved a market participant with more generation than load falsely overstating to the ISO its scheduled load to correspond with the amount of generation in its schedule. This practice, also sometimes referred to as ''Inc-ing'' or ''Fat Boy,'' permitted the market participant to be dispatched by the ISO during real time to its full capacity and receive the real-time market clearing price even though it did not have scheduled load equal to its generation capacity when it bid into the day-ahead market. Thus, Overscheduling Load ensured that generation would not go unsold in the real-time market.

60. Overscheduling Load required the market participant to submit a false load schedule to the ISO since the ISO required that only balanced schedules of load and generation could be bid into the day-ahead market. Although the submission of such false schedules is a violation of the MMIP, there were countervailing circumstances that existed in the California market at the time that caused the market participants to engage in Overscheduling Load. The ISO rules required that all market participants submit schedules containing balanced levels of generation and load. However, as noted above, in an effort to minimize their procurement costs in the California market due to the interplay between the PX and ISO rules, the utilities routinely underscheduled their load. The market participants who engaged in Overscheduling Load did so as a direct response to the utilities' practice of Underscheduling Load.[65] Overscheduling Load actually helped reduce reliability problems in the real-time market. In fact, Overscheduling Load was often actively encouraged by the ISO because it reduced the need for real-time energy due to the utilities' underscheduling.[66] Finally, participants who engaged in Overscheduling Load did not set the market clearing price because, as uninstructed energy, they were price takers who were paid the ex-post price for imbalance energy which was set by the bid of the marginal unit dispatched.[67] Therefore, we are not seeking disgorgement of unjust profits from those market participants who engaged in Overscheduling Load.

3. California Practices

61. As noted, the Commission has determined that some of the conduct discussed in the Staff Final Report and the 100 Days Evidence did not violate the MMIP or any other tariff violation. These California Practices were widely recognized and accepted as appropriate and legitimate practices, as discussed below. They did not involve any false representations or take unfair advantage of ISO rules. Accordingly, we are not seeking to recover the profits earned by market participants as the result of engaging in such conduct.

a. Export of California Power

62. This practice involved a purchase of power in the California day-ahead market at or below the price cap and then a resale of the power outside the state at a higher (uncapped) price. Unlike the False Import practice discussed above, energy is actually exported out of California.

63. This practice did not violate the tariffs or rules of the PX or ISO.[68] Market participants were engaging in arbitrage between the California market, which had price caps in effect, and markets outside of California that did not have price caps and where they could receive a higher price.[69] This type of export practice has never been prohibited and, to the extent it does not involve collusion with other market participants,[70] represents legitimate economically rational attempts by the

[62] The Commission halted this practice created under California legislation (*see* AB 1890 (September 23, 1996)) and began allowing the utilities to procure resources under long-term contracts in December 2000. *See supra* note 3.

[63] The Commission previously noted in several orders that the widespread underscheduling of load was taking place in the California markets, and directed changes to the market rules and allowed penalties, in an attempt to address the problem. *See* December 19, 2001 Order, 97 FERC at 62,226–27; December 15, 2000 Order, 93 FERC at 62,002–03; November 1, 2000 Order, 93 FERC at 61,361–62; and August 23, 2000 Order, 92 FERC at 61,608.

[64] MMIP 2.1.3.

[65] The phenomenon of market participants engaging in Overscheduling Load in response to the utilities' practice of Underscheduling Load was widely known and accepted. *See* Report on California Energy Markets Issues and Performance: May-June, 2000, Special Report, by Department of Market Analysis, California ISO, dated August 10, 2000, pages 2–3, 25–37, *available at <http://www.caiso.com/docs/09003a6080/07/40/09003a6080074029.pdf>*.

[66] Some of the generators in the 100 Days Evidence indicated that the ISO had encouraged the practice of Overscheduling Load to obtain needed supply. For example, Reliant stated that the ISO assisted it by creating an artificial load point, *i.e.*, helped it provide additional generation to the market. *See* Reliant's Reply to the March 3, 2003 Submission of California Parties, Vol. I. Exhibit REL–27 at 33–34 (Docket No. EL00–95–089, *et al.*, March 23, 2003). In addition, in explaining that Overscheduling Load did not cause or exacerbate the high price in May 2000, an ISO report states that the generation that was overscheduled was not hidden from the ISO but was directly factored into the ISO's decision about how much generation would be required to meet real time demand. E. Hildebrandt, ISO's Department of Market Analysis, Did Any of Enron's Trading and Scheduling Practices Contribute to Outages in California? at 12–13 (November 15, 2002), available at *http://www.caiso.com/docs/2002/11/26/2002112610411219558.pdf*.

[67] *See* ISO Tariff section 2.5.23.

[68] We note, however, that the ISO does have the authority to alter scheduled deliveries of energy and ancillary services into or out of the ISO controlled grid to avert a system emergency. *See* ISO Tariff § 5.6.1.

[69] In fact, this is precisely what arbitrage is—*i.e.*, the purchase of a commodity, such as electricity, in one market (day-ahead), for immediate resale in another market (real-time) in order to profit from the unequal prices. As more parties engage in arbitrage, prices between the markets converge and the opportunity for profits should disappear.

[70] There has been no evidence discovered to suggest that there was any collusion between market participants to export their energy outside of California in order to create scarcity within California.

market participants to maximize their profits.

b. Ancillary Services-Related Practices—Arbitrage.

64. As noted above, market participants engaged in several different practices involving ancillary services. Two of those we discussed above (Paper Trading and Double Selling) and we consider those practices to be Gaming Practices in violation of the MMIP. However, to the extent a market participant was merely taking advantage of systematic differences in the day-ahead and hour-ahead market prices for ancillary services by selling ancillary services in the day-ahead market and buying them back at a lower price in the hour-ahead market, we find this practice to be consistent with legitimate arbitrage.[71] Thus, as long as the market participant had the generation available to provide the ancillary services or appropriately contracted for it, selling the energy at one price and buying it back at a lower price did not violate the ISO rules or tariff and was nothing more than a method for the market participant to reap a valid profit from the price differential in the day-ahead and real-time markets.

c. Access to IIR Outage Data.

65. For an annual fee, market participants could subscribe to a generation outage notification service provided by Industrial Information Resources (IIR). IIR provided information to subscribers via daily e-mails and upon request regarding plant outages in the West. The information sometimes included the cause of outages, prospective as well as current plant outages, and expected start and end dates. IIR obtained information directly from the generating plants.

66. In the 100 Days Evidence, the California Parties alleged that market participants who utilized IIR violated the ISO tariff regarding confidentiality of outage data and that subscriptions to the IIR service raised issues under the antitrust laws. We disagree. The ISO tariff prohibits the ISO from revealing market participants' confidential outage data; the tariff does not prohibit the market participants providing the information to third parties and then subscribing to third-parties' services.[72] Further, subscribing to a service that provides outage information does not mean that the subscribers used that information to manipulate the market. There has been no evidence to suggest that the sharing of outage information was used to manipulate the market. Subscribing to IIR's service did not involve any false representations, rule violations, or violations of MMIP. Furthermore, no evidence was offered to suggest that any outage data was used in a collusive manner to raise prices.

E. Further Clarification as to What Constitutes Gaming Practices

67. The screens used by the ISO and Dr. Fox-Penner are broadly inclusive and some of the characteristics that were used to identify potential Gaming Practices may also be present intransactions that were not actually Gaming Practices. In fact, the 100 Days Evidence indicates that there may be legitimate explanations for many of the transactions that may initially appear to be Gaming Practices. As a result, the Identified Entities will have an opportunity to submit evidence to the ALJ that may demonstrate that any or all of the transactions identified in the ISO Report or Dr. Fox-Penner's studies were not Gaming Practices. For example, with respect to transactions identified as False Imports, evidence that may demonstrate that the transactions were legitimate transactions and not part of a False Import practice might include establishing that: (a) The ''imported'' power was actually imported from outside the state of California and not a fictitious import, *i.e.*, not an export and import that constitutes a False Import, as described above; (b) the transaction was designed to work around a transmission constraint (such as on Path 15) which limited the movement of power between two points within the ISO control area by using an uncongested transmission path (such as the Pacific DC intertie) to move the power to a point outside the ISO control area and back to its intended destination; (c) the export and import were actually two independent and unrelated obligations such as a pre-existing long-term bilateral contractual export obligation followed by a real-time import from the same party in an unrelated transaction; or (d) the market participant was importing power on behalf of the ISO or California Department of Water Resources (California DWR), because suppliers were unwilling to assume the credit risk of dealing directly with the ISO or California DWR.

68. Similarly, evidence that may establish that transactions were not part of a Cutting Non-firm practice might be that, with respect to any energy that was scheduled, but did not flow, the energy did not flow due to circumstances beyond the control of the market participant and without prior knowledge by the market participant that the energy would not flow. Regarding Paper Trading and Double Selling, evidence that may establish that the transactions, identified by the ISO and Dr. Fox-Penner, were not in fact Gaming Practices, but were instead legitimate transactions might include showing that: (a) The resources to provide the ancillary services sold in the day-ahead market were actually available to the bidder; (b) ancillary services payments were not received for capacity that was not available to provide ancillary services, or (c) the ISO requested that the market participant provide energy in the real-time market even though it knew that such energy was being held for ancillary services previously sold to the ISO.

F. Identified Entities With Revenues of $10,000 or Less

69. We are exercising our prosecutorial discretion and not prosecuting certain of the Identified Entities which the ISO Report states have earned revenues of $10,000 or less for a particular Gaming Practice and where we have no other basis to prosecute them for that particular Gaming Practice.[73] In the ISO's latest report analyzing various practices, the ISO states that its analysis includes market participants with a relatively small number of transactions and revenues from particular practices. The ISO explains that the smaller the volume of transactions and the revenues identified for individual market participants, the less the likelihood that the transactions represent prohibited Gaming Practices. The ISO, in fact, recommends applying a minimum threshold in any further investigations of these practices.[74] We agree that the burden and costs to both the parties and

[71] *See* California Independent System Operator Corporation, 82 FERC ¶ 61,327 (1998) (Commission accepted ISO Tariff Amendment No. 4, which allowed scheduling coordinators to buy back and sell ancillary services in the hour-ahead market).

[72] ISO Tariff 20.3.1–20.3.3.

[73] We, thus, are exercising our prosecutorial discretion and not prosecuting Constellation Power Source, Inc. for False Import practice.

Further, we are exercising our prosecutorial discretion and not prosecuting, Calpine Corp., Idaho Power Company, Modesto Irrigation District, TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California), Inc., and Williams Energy Services Corp. for Cutting Non-firm.

We, likewise, are not prosecuting Arizona Public Service Company, Calpine Corp., Hafslund Energy Trading, LLC, Portland General Electric Company, and Puget Sound Energy, Inc. for Circular Scheduling.

We, similarly, are not prosecuting Calpine Corp., City of Vernon, Constellation Power Source, Inc., Public Service Company of New Mexico and Portland General Electric Company for Paper Trading.

[74] ISO Report at 3–4 (June 2003) .

the Commission associated with litigating whether market participants whose revenues were less than $10,000 for particular Gaming Practices engaged in those practices may exceed any unjust profits on the revenues that resulted from such transactions. Accordingly, we are exercising our prosecutorial discretion and not proceeding against certain Identified Entities for particular Gaming Practices.

G. Show Cause Order and Institution of Trial-Type Evidentiary Proceeding

70. As described above, and as the Staff Final Report concludes, the Gaming Practices identified above violate the ISO's and PX's filed tariffs, and the Identified Entities appear to have engaged in such practices, as identified above.

71. Accordingly, we require these entities to show cause, in a trial-type evidentiary proceeding to be held before an ALJ, why they should not be found to have engaged in Gaming Practices in violation of the ISO's and PX's tariffs.[75] In addition, we direct the ALJ to hear evidence and render findings and conclusions, quantifying the full extent to which the entities named herein may have been unjustly enriched by their engaging in Gaming Practices.[76] We require that any and all such unjust profits for the period January 1, 2000 to June 20, 2001 be disgorged in their entirety. We also direct the ALJ to consider any additional, appropriate non-monetary remedies, as may be appropriate, *e.g.*, revocation of an Identified Entity's market-based rate authority and revisions to an Identified Entity's code of conduct.[77]

72. The ISO shall, within 21 days of the date of this order, provide the Identified Entities all of the specific transaction data for each of the Gaming Practices discussed in the ISO Report, including an explanation of the screen(s) that it used to identify the transactions in question. The ISO shall contemporaneously file that transaction data, including the explanation of its screen(s), with the Commission. Unless the Identified Entity files an offer of settlement as discussed below, within 45 days thereafter, the Identified Entities shall file their show cause responses.

73. We recognize that, in some instances, the burdens and costs to both the parties and the Commission associated with litigating whether certain market participants engaged in particular Gaming Practices and violated the MMIP may exceed the revenues and unjust profits that resulted from such transactions. There are also many disputed issues of fact which, in litigation, would tend to prolong uncertainty for the Identified Entities and the marketplace as a whole. Therefore, we encourage the Identified Entities to resolve these proceedings by settlement with the Commission's Trial Staff. In this regard, should participants not settle on a mechanism to distribute monies, the ALJ should request comment and render a finding on a mechanism that will fairly distribute any monies to those customers harmed by the Gaming Practices.

74. Finally, given the commonality of issues of law and fact presented herein, Docket Nos. EL03–137–000, EL03–138–000, EL03–139–000, EL03–140–000, EL03–141–000, EL03–142–000, EL03–143–000, EL03–144–000, EL03–145–000, EL03–146–000, EL03–147–000, EL03–148–000, EL03–149–000, EL03–150–000, EL03–151–000, EL03–152–000, EL03–153–000, EL03–154–000, EL03–155–000, EL03–156–000, EL03–157–000, EL03–158–000, EL03–159–000, EL03–160–000, EL03–161–000, EL03–162–000, EL03–163–000, EL03–164–000, EL03–165–000, EL03–166–000, EL03–167–000, EL03–168–000, EL03–169–000, EL03–170–000, EL03–171–000, EL03–172–000, EL03–173–000, EL03–174–000, EL03–175–000, EL03–176–000, EL03–177–000, EL03–178–000 and EL03–179–000 will be consolidated for purposes of hearing and decision.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held in Docket Nos. EL03–137–000, EL03–138–000, EL03–139–000, EL03–140–000, EL03–141–000, EL03–142–000, EL03–143–000, EL03–144–000, EL03–145–000, EL03–146–000, EL03–147–000, EL03–148–000, EL03–149–000, EL03–150–000, EL03–151–000, EL03–152–000, EL03–153–000, EL03–154–000, EL03–155–000, EL03–156–000, EL03–157–000, EL03–158–000, EL03–159–000, EL03–160–000, EL03–161–000, EL03–162–000, EL03–163–000, EL03–164–000, EL03–165–000, EL03–166–000, EL03–167–000, EL03–168–000, EL03–169–000, EL03–170–000, EL03–171–000, EL03–172–000, EL03–173–000, EL03–174–000, EL03–175–000, EL03–176–000, EL03–177–000, EL03–178–000 and EL03–179–000: (1) where the Identified Entities shall show cause why they should not be found to have employed the above-described Gaming Practices in violation of the ISO's and PX's tariffs; and (2) where the appropriate remedies may be identified and quantified, as discussed in the body of this order.

(B) Any interested person desiring to be heard in these proceedings should file a notice of intervention or motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214), within 21 days of the date of this order.

(C) The ISO is hereby directed to provide the Identified Entities with all of the specific transaction data for each of the Gaming Practices discussed in the ISO Report, including an explanation of the screen that it used to identify the transactions in question, within 21 days of the date of this order, as discussed in the body of this order. The ISO shall contemporaneously file such transaction data with the Commission.

(D) Within 45 days of the ISO's submittal made pursuant to Ordering Paragraph (C) above, the Identified Entities shall submit show cause responses, as discussed in the body of this order.

(E) An administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days of the filing of the show cause submissions ordered in Ordering Paragraph (D) above, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the

[75] We will incorporate the Staff Final Report and the underlying record in Docket No. PA02–2–000 by reference into the record in this proceeding.

[76] We will permit the parties to introduce relevant evidence from the 100 Days Evidence proceeding. *See supra* P 9.

As discussed in the Staff Final Report and in the body of this order, there is evidence of gaming and/or anomalous market behavior sufficient to require the Identified Entities to show cause why they should not be found to have engaged in Gaming Practices in violation of the ISO's and PX's tariffs. As a result, the burden of going forward will be placed on the Identified Entities. However, the ultimate burden is upon the Commission. To that end, the Commission is aware that many parties in California and elsewhere in the West have sought a forum in which to address the issues raised in this proceeding. Those parties may participate in this proceeding upon attaining intervenor status.

[77] *See supra* P 2.

Commission's Rules of Practice and Procedure.

(F) Docket Nos. EL03–137–000, EL03–138–000, EL03–139–000, EL03–140–000, EL03–141–000, EL03–142–000, EL03–143–000, EL03–144–000, EL03–145–000, EL03–146–000, EL03–147–000, EL03–148–000, EL03–149–000, EL03–150–000, EL03–151–000, EL03–152–000, EL03–153–000, EL03–154–000, EL03–155–000, EL03–156–000, EL03–157–000, EL03–158–000, EL03–159–000, EL03–160–000, EL03–161–000, EL03–162–000, EL03–163–000, EL03–164–000, EL03–165–000, EL03–166–000, EL03–167–000, EL03–168–000, EL03–169–000, EL03–170–000, EL03–171–000, EL03–172–000, EL03–173–000, EL03–174–000, EL03–175–000, EL03–176–000, EL03–177–000, EL03–178–000 and EL03–179–000 are hereby consolidated for purposes of hearing and decision.

(G) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

By the Commission. Commissioner Massey dissented in part with a separate statement attached.

Magalie R. Salas,

Secretary.

Attachment A.—Market Participants Alleged to Have Engaged in the False Import Practice in Violation of the MMIP

1. Aquila, Inc.
2. Arizona Public Service Co.
3. Bonneville Power Administration
4. City of Glendale
5. Coral Power, LLC
6. Duke Energy Trading and Marketing Co.
7. Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC
8. Enron Power Marketing, Inc. and Enron Energy Services Inc.
9. Idaho Power Co.
10. Los Angeles Department of Water and Power
11. Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC
12. Pacificorp
13. PGE Energy Services
14. Portland General Electric Co.
15. Powerex Corp.
16. Public Service Co. of New Mexico
17. Puget Sound Energy
18. Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc.
19. Salt River Project Agricultural Improvement and Power District
20. Sempra Energy Trading Corp.
21. Tuscon Electric Power Co.
22. Williams Energy Services Corp.

Attachment B—Market Participants Alleged to Have Engaged in Congestion-Related Practices in Violation of the MMIP

Cutting Non-firm

1. American Electric Power Services Corp.
2. Aquila, Inc
3. Cargill-Alliant, LLC
4. City of Glendale
5. City of Riverside
6. Coral Power, LLC
7. Duke Energy Trading & Marketing Company
8. Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC
9. Enron Power Marketing, Inc. and Enron Energy Services Inc.
10. Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC
11. Morgan Stanley Capital Group
12. Pacific Gas and Electric Company
13. PacifiCorp.
14. Portland General Electric Company
15. Powerex Corp.
16. Puget Sound Energy, Inc.
17. San Diego Gas & Electric Company
18. Sempra Energy Trading
19. Sierra Pacific Power Company
20. Southern California Edison Company

Circular Scheduling

1. American Electric Power Service Corp.
2. Aquila, Inc.
3. Automated Power Exchange, Inc.
4. Cargill-Alliant, LLC
5. City of Glendale
6. City of Redding
7. City of Riverside
8. Coral Power, LLC
9. Duke Energy Trading and Marketing Company
10. Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC
11. Enron Power Marketing, Inc. and Enron Energy Services Inc.
12. F P & L Energy
13. Idaho Power Company
14. Los Angeles Department of Water and Power
15. Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC
16. Modesto Irrigation District
17. Morgan Stanley Capital Group
18. Pacificorp
19. PGE Energy Services
20. Powerex Corp.
21. Public Service Company of Colorado
22. Salt River Project Agricultural Improvement and Power District
23. San Diego Gas & Electric Company
24. Sempra Energy Trading Corp.
25. Southern California Edison Company
26. TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California), Inc.
27. Williams Energy Services Corp.

Scheduling Service on Out-of-Service Lines

1. City of Anaheim
2. Coral Power, LLC
3. Duke Energy Trading and Marketing Company
4. Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC
5. Enron Power Marketing, Inc. and Enron Energy Services Inc.
6. Morgan Stanley Capital Group
7. Powerex Corp.
8. Sempra Energy Trading Corp.

Load Shift

1. City of Glendale
2. Coral Power, LLC
3. Duke Energy Trading and Marketing Company
4. Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC
5. Enron Power Marketing, Inc. and Enron Energy Services Inc.
6. Los Angeles Department of Water and Power
7. Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC
8. Northern California Power Agency
9. Powerex Corp.
10. Williams Energy Services Corp.

Attachment C.—Market Participants Alleged To Have Engaged in Paper Trading in Violation of the MMIP

1. Arizona Public Service Co.
2. Automated Power Exchange, Inc.
3. Bonneville Power Administration
4. California Department of Water Resources
5. California Power Exchange
6. City of Anaheim
7. City of Azusa
8. City of Glendale
9. City of Pasadena
10. Coral Power, LLC
11. Duke Energy Trading & Marketing Co.
12. Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC
13. Enron Power Marketing, Inc. and Enron Energy Services Inc.
14. Idaho Power Company
15. Los Angeles Department of Water and Power

16. Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC
17. Modesto Irrigation District
18. Northern California Power Agency
19. Pacific Gas and Electric Co.
20. Powerex Corp.
21. Puget Sound Energy, Inc.
22. Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc.
23. Sempra Energy Trading Corp.
24. Southern California Edison Co.
25. Western Area Power Administration
26. Williams Energy Services Corp.

Attachment D.—Market Parties Alleged to Have Engaged in Double Selling in Violation of the MMIP

1. Duke Energy Trading and Marketing Co.
2. Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC
3. Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC
4. Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc.

Attachment E.— Entities that Submitted 100 Day Evidence in California (Docket Nos. EL00–95, EL00–98, EL01–10, EL02–60 and EL02–62) [80]

1. AES Alamitos, LLC, AES Huntington Beach, LLC, AES Redondo Beach, LLC, and AES Southland, LLC (AES)
2. Allegheny Energy Supply Co.
3. Arizona Electric Power Cooperative, Inc.
4. Automated Power Exchange, Inc.
5. Avista Energy, Inc.
6. Avista Corporation d/b/a Avista Utilities
7. Avista Energy, Inc., BP Energy Company, IDACORP Energy L.P., Puget Sound Energy, Inc., TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing (California) Inc., and TransCanada Energy, Ltd.
8. Bonneville Power Administration
9. BIT (City of Burbank, California, the Imperial Irrigation District, Turlock Irrigation District) (Joint Reply Comments and Proposed Reply Findings)
10. California Electricity Oversight Board and California Public Utilities Commission
11. City of Burbank, California, City of Glendale, California, Turlock Irrigation District, and Imperial Irrigation District
12. California Independent System Operator Corporation
13. California Parties (People of the State of California ex rel. Bill Lockyer, Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company, and Southern California Edison Company)
14. CAlifornians for Renewable Energy (CARE)
15. Calpine Corporation
16. Cities of Anaheim, Azusa, Banning, Colton and Riverside, California
17. City of Glendale, California
18. City of Pasadena, California
19. City of Redding, California
20. City of Santa Clara
21. City of Seattle, Washington
22. City of Vernon, California
23. Competitive Supplier Group (El Paso Merchant Energy, LP, BP Energy Company, Coral Power, IDACORP Energy LP, Exelon Corporation on behalf of Exelon Generation Company, LLC, PECO Energy Company and Commonwealth Edison Company, Portland General Electric Company, Public Service Company of New Mexico, Sempra Energy Trading Corporation, TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing (California), Inc., TransCanada Energy Ltd., Avista Energy, Inc., Puget Sound Energy, Inc., Constellation Power Source, Inc., Powerex Corp., and Public Service Company of Colorado)
24. Constellation Power Source, Inc. and NewEnergy, Inc.
25. Coral Power, LLC
26. Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC(Duke Energy)
27. Dynegy Power Marketing, Inc. *et al.*
28. Electric Power Supply Association
29. El Paso Merchant Energy, LP
30. Enron Power Marketing, Inc. and Enron Energy Services, Inc.
31. Eugene Water & Electric Board
32. Exelon (Exelon Corporation on behalf of Commonwealth Edison Company, Exelon Generation Company, LLC and PECO Energy Company)
33. Public Utility District No. 2 of Grant County
34. Hafslund Energy Trading, LLC
35. IDACORP Energy LP and Idaho Power Company
36. Imperial Irrigation District
37. Independent Energy Producers Association
38. Indicated Long-Term Sellers (Allegheny Energy Supply Company, LLC, Coral Power, L.L.C., Mirant Americas Energy Marketing, L.P., Morgan Stanley Capital Group Inc. and Sempra Energy Resources)
39. Los Angeles Department of Water and Power
40. Merrill Lynch Capital Services, Inc.
41. Mirant (Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC)
42. Mirant Americas Energy Marketing, LP
43. Morgan Stanley Capital Group, Inc.
44. Northern California Power Agency
45. PacifiCorp
46. PGET and PGEES
47. Pinnacle West Companies
48. Portland General Electric Company
49. Powerex Corp.
50. PPL Montana, LLC and PPL EnergyPlus, LLC (PPL Parties)
51. PPM Energy Inc. (fna Pacificorp Power Marketing Inc.)
52. Public Service Company of Colorado
53. Public Service Company of New Mexico
54. Puget Sound Energy, Inc.
55. Reliant Energy Power Generation, Inc. and Reliant Energy, Inc. (Reliant)
56. Sacramento Municipal Utility District
57. Enron
58. Salt River Project Agricultural Improvement and Power District
59. Sempra Energy Resources
60. Sempra Energy Trading Corp.
61. Public Utility District No. 1 of Snohomish County, Washington
62. TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California), Inc.
63. TransCanada Energy, Ltd.
64. Turlock Irrigation District
65. Tuscon Electric Power Company
66. Valley Electric Association, Inc.
67. Western Area Power Administration
68. Western Power Trading Forum
69. Williams Energy Marketing & Trading Company

Attachment F.—Parties Filing Briefs on Commission Staff's Interpretation of the MMIP

1. American Public Power Association
2. Arizona Electric Power Cooperative
3. Avista Energy
4. Bonneville Power Administration
5. California Generators (Mirant, Dynegy, Williams)
6. California Independent System Operator Corporation
7. California Parties (California Attorney General, California Electricity Oversight Board, California Public Utilities Commission, Pacific Gas & Electric Company, and Southern California Edison Company)
8. Calpine Corporation
9. CARE
10. City of Glendale, California
11. City of Redding, California
12. City of San Diego, California
13. Colorado River Commission of Nevada
14. Competitive Supplier Group (Aquila, Aquila Merchant Services, Arizona Public Service Company, Avista Energy, Constellation Power Source, Coral Power, El Paso Merchant Energy, IDACORP Energy, Idaho Power Company, Pinnacle West Capital Corporation, Portland General Electric, Puget Sound Energy, and Sempra Energy Trading Corp.)
15. Coral Power
16. Duke Energy North America and Duke Energy Trading and Marketing
17. Electric Power Supply Association
18. Electricity Consumers Resource Council
19. Enron Power Marketing, Inc.
20. Grays Harbor County, Washington Public Utility District
21. Los Angeles Department of Water and Power
22. MG Industries, Tamco, and Lehigh Southwest Cement Company

[80] The following entities filed comments in a related proceeding in *Puget Sound Energy, Inc., et al.* v. *All Jurisdictional Sellers,* Docket No. EL01–10–000: AES, Avista *et al.*, CARE, Public Utility District No. 1 of Chelan County, City of Santa Clara, City of Seattle, City of Tacoma and Port of Seattle, Coral Power, Duke Energy North America, IDACORP and Idaho Power, Kaiser Aluminum & Chemical, Modesto Irrigation District, Northern California Power Agency, Northwest PUDs (Public Utility District No. 2 of Grant County, WA *et al.*), PacifiCorp, Pinnacle West, Portland General Electric, PPL Montana and PPL Energy Plus, Public Service Company of New Mexico, Puget Sound Energy, Reliant Energy, Sacramento Municipal Utility District, Transaction Finality Group, TransAlta Energy Marketing, Williams Energy Marketing & Trading Company.

23. Modesto Irrigation District
24. Morgan Stanley Capital Group
25. Northern California Power Agency
26. PJM Industrial Customer Coalition
27. PacifiCorp
28. Powerex Corp.
29. Public Service Company of New Mexico
30. Public Utility District No. 2 of Grant County, Washington
31. Puget Sound Energy
32. Reliant
33. Sempra Energy Trading Corp.

Attachment G.—ISO Market Notice, July 3, 2002

Ancillary Services Payments Rescinded Due to Generator Unavailability

Market Participants and Scheduling Coordinators: As detailed in a Market Notice posted on July 2, 2002, the ISO has received requests from various parties for information about Scheduling Coordinators (1) that initially received payments for providing to the ISO Ancillary Services that subsequently were rescinded because the scheduled generating units were unable to provide such services, and (2) that agreed to provide Ancillary Services for their own needs (*i.e.*, self-provision) but in fact did not do so. As described in the July 2, 2002 Market Notice, the ISO does not consider the names of such Scheduling Coordinators or the aggregated amounts of payments rescinded for non-performance or additional charges for failure to self-provide to be confidential or commercially sensitive under the ISO Tariff Section 20.3.2.

The ISO monitors the availability and performance of generating resources scheduled to provide Ancillary Services. Beginning on June 14, 1999, the ISO began rescinding Ancillary Services capacity payments when such services were not delivered. Failure to deliver such services may be the result of a number of factors, including economic decisions, outages, or operational changes. The ISO charges the relevant market price to Scheduling Coordinators that indicated they would self-provide Ancillary Services but subsequently did not do so.

The Ancillary Services payments listed below represent all invoiced amounts through April 30, 2002 and are subject to potential change as a result of the dispute resolution process set forth in the ISO Tariff.

Scheduling coordinator name	Ancillary service capacity payments rescinded
Arizona Public Service Co	$17,832.13
Automated Power Exchange	213,288.24
Avista Energy	53,466.57
Bonneville Power Administration	33,432.76
California Department of Water Resources	2,167,285.09
California Power Exchange	20,275,167.45
Calpine	2.65
City of Anaheim	93,042.14
City of Azusa	4,450.00
City of Glendale	1,971.41
City of Pasadena	609,196.38
City of Vernon	6,106.33
Constellation Power Source	1,456.53
Coral Power	56,459.65
Duke Energy Trading & Marketing	14,355,586.95
Dynegy Electric Clearinghouse	25,193,737.23
Enron Power Marketing Inc	991,443.30
Mirant	11,167,048.87
Modesto Irrigation District	51,176.11
Northern California Power Agency	146,592.71
PG&E—Utility	10,995,192.78
PG&E Transmission	19,411.23
PG&E Transmission—Non-Grid [81]	65,199.05
Portland General Electric Co	3,347.35
PowerEx	389,325.10
Puget Sound Energy	10,000.00
Reliant Energy Services	16,715,969.28
Sempra Energy Trading	22,215.60
Southern California Edison	286,310.15
Western Area Power Administration	21,304.02
Williams Energy Services	25,073,505.04
Total	129,040,522.10

The ''PG&E Transmission—Non-Grid'' charges are in dispute and have not yet been invoiced to PG&E Transmission. PG&E Transmission's responsibility for payment of these charges currently is under consideration by the Federal Energy Regulatory Commission.

If you have any questions, about this Market Notice, please contact your Client Account Representative.

Client Relations Communications.0715
CRCommunications@caiso.com

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION

	Docket No.
American Electric Power Service Corporation	EL03–137–000
Aquila, Inc	EL03–138–000
Arizona Public Service Company	EL03–139–000
Automated Power Exchange, Inc	EL03–140–000
Bonneville Power Administration	EL03–141–000
California Department of Water Resources	EL03–142–000

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION—Continued

	Docket No.
California Power Exchange	EL03–143–000
Cargill-Alliant, LLC	EL03–144–000
City of Anaheim, California	EL03–145–000
City of Azusa, California	EL03–146–000
City of Glendale, California	EL03–147–000
City of Pasadena, California	EL03–148–000
City of Redding, California	EL03–149–000
City of Riverside, California	EL03–150–000
Coral Power, LLC	EL03–151–000
Duke Energy Trading and Marketing Company	EL03–152–000
Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC.	EL03–153–000
Enron Power Marketing, Inc. and Enron Energy Services Inc	EL03–154–000
Florida Power & Light	EL03–155–000
Idaho Power Company	EL03–156–000
Los Angeles Department of Water and Power	EL03–157–000
Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC	EL03–158–000
Modesto Irrigation District	EL03–159–000
Morgan Stanley Capital Group	EL03–160–000
Northern California Power Agency	EL03–161–000
Pacific Gas and Electric Company	EL03–162–000
PacifiCorp	EL03–163–000
PGE Energy Services	EL03–164–000
Portland General Electric Company	EL03–165–000
Powerex Corporation (f/k/a British Columbia Power Exchange Corp.)	EL03–166–000
Public Service Company of Colorado	EL03–167–000
Public Service Company of New Mexico	EL03–168–000
Puget Sound Energy, Inc	EL03–169–000
Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc	EL03–170–000
Salt River Project Agricultural Improvement and Power District	EL03–171–000
San Diego Gas & Electric Company	EL03–172–000
Sempra Energy Trading Corporation	EL03–173–000
Sierra Pacific Power Company	EL03–174–000
Southern California Edison Company	EL03–175–000
TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California), Inc	EL03–176–000
Tucson Electric Power Company	EL03–177–000
Western Area Power Administration	EL03–178–000
Williams Energy Services Corporation	EL03–179–000

(Issued June 25, 2003)

MASSEY, Commissioner, *dissenting in part:*

Today the Commissioner takes another step toward addressing the market manipulation that contributed to the extraordinary Western power crisis. I support this show cause order, and applaud the Commission for dealing with these issues. I write separately to express my disagreement with two aspects of the order.

First, I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the single market clearing price paid by all market participants and collected by all sellers. The Federal Power Act requires that all rates and charges be just and reasonable. Where the market has been manipulated so as to affect the market clearing price, that price is not just and reasonable and is therefore unlawful. Simply requiring that bad actors disgorge their individual profits does not make the market whole because all sellers received the unlawful price caused by the manipulation. The narrow remedy of profit disgorgement is not an adequate remedy for the adverse effect of the bad behavior on the market price, and may not be an adequate deterrent to future behavior. The appropriate remedy may be that the manipulating seller makes the market whole.[1] Unfortunately, today's order appears to take this remedy off of the table. I would prefer to wait to see the extent of harm that specific behaviors caused before addressing the remedy issue.

Second, I would not apply the show cause order to non-public utilities that are otherwise not jurisdictional. Today's order uses the same rationale for doing so as was used to extend a refund obligation to non-public utilities in our July 25, 2001 Order.[2] I disagreed with the rationale at that time, and I still do not believe the Commission has this authority.

For these reasons, I dissent in part from today's order.

William L. Massey,
Commissioner.

[FR Doc. 03–16821 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission has accepted the make the market whole remedy as part of a settlement for withholding generation from the California PX market. See 102 FERC ¶ 61,108 (2003).

[2] San Diego Gas & Electric Company *et al.,* 96 FERC ¶ 61,120 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–134–000 and EL03–135–000]

Richard Blumenthal, Attorney General of the State of Connecticut, and The Connecticut Department of Public Utility Control v. NRG Power Marketing, Inc., Connecticut Light and Power Company; Notice of Initiation of Proceedings and Refund Effective Dates

June 27, 2003.

Take notice that on June 25, 2003, the Commission issued an order in the above-indicated docket nos. initiating proceedings in Docket Nos. EL03–134–000 and EL03–135–000 under section 206 of the Federal Power Act.

The refund effective date in Docket Nos. EL03–134–000 and EL03–135–000

will be 60 days after publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16823 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–469–005, RP01–22–007 and RP03–177–002]

East Tennessee Natural Gas Company; Notice of Compliance Filing

June 26, 2003.

Take notice that on June 23, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed on Appendices A and B of the filing.

East Tennessee states that the purpose of this filing is to comply with the Commission's May 23, 2003 ''Order on Rehearing and Compliance Filings'' issued in East Tennessee's Order No. 637 proceeding in the captioned dockets.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

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: July 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16750 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–180–000, et al.]

Enron Power Marketing, Inc. and Enron Energy Services, Inc., et al.; Order To Show Cause Concerning Gaming and/or Anomalous Market Behavior Through the Use of Partnerships, Alliances or Other Arrangements and Directing Submission of Information

June 25, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

In the matter of: EL03–180–000, EL03–181–000, EL03–182–000, EL03–183–000, EL03–184–000, EL03–185–000, EL03–186–000, EL03–187–000, EL03–188–000, EL03–189–000, EL03–190–000, EL03–191–000, EL03–192–000, EL03–193–000, EL03–194–000, EL03–195–000, EL03–196–000, EL03–197–000, EL03–198–000, EL03–199–000, EL03–200–000, EL03–201–000, EL03–202–000, EL03–203–000 (Consolidated): Enron Power Marketing, Inc. and Enron Energy Services, Inc., Aquila, Inc., City of Glendale, California, City of Redding, California, Colorado River Commission, Constellation Power Source, Inc., Coral Power, LLC, El Paso Merchant Energy, L.P., Eugene Water and Electricity Board, Idaho Power Company, Koch Energy Trading, Inc., Las Vegas Cogeneration, L.P., MIECO, Modesto Irrigation District, Montana Power Company, Morgan Stanley Capital Group, Northern California Power Agency, PacifiCorp, PECO, Powerex Corporation (f/k/a British Columbia Power Exchange Corporation), Public Service Company of New Mexico, Sempra Energy Trading Corporation, TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy marketing (California), Inc., Valley Electric Association, Inc.

I. Introduction

1. This order finds that, based on a report by Commission Staff (Staff Final Report), and evidence and comments submitted by market participants, there is evidence that Enron Power Marketing, Inc. and Enron Energy Services Inc. (Enron) and a number of entities identified below (collectively, Partnership Entities) worked in concert through partnerships, alliances or other arrangements (jointly, Partnerships) to engage in activities that constitute gaming and/or anomalous market behavior (Gaming Practices) in violation of the California Independent System Operator Corporation's (ISO) and California Power Exchange's (PX) tariffs during the period January 1, 2000 to June 20, 2001.[1] This order also finds that there is evidence that a number of Partnership Entities, identified below, appear to have had similar Partnerships, which could be attempts to engage in similar activities as the Enron partnerships.[2]

2. Consequently, this order directs those Partnership Entities, in a trial-type evidentiary hearing to be held before an administrative law judge (ALJ), to show cause why their behavior during January 1, 2000 to June 20, 2001 does not constitute gaming and/or anomalous market behavior as defined in the ISO and PX tariffs.[3] In addition, we also direct the ALJ to hear evidence and render findings and conclusions quantifying the full extent to which the Partnership Entities may have been unjustly enriched as a result of their conduct, and the ALJ may recommend the monetary remedy of disgorgement of unjust profits and any other additional, appropriate non-monetary remedies. For example, the ALJ may identify non-monetary remedies such as revocation of a Partnership Entity's market-based rate authority and revisions to a Partnership Entity's code of conduct if the ALJ finds such remedies appropriate.

[1] June 20, 2001 has been selected as the end date of the relevant period in this proceeding, when a prospective mitigation and market monitoring plan took effect; *see* San Diego Gas & Electric Co., *et al.*, 95 FERC ¶ 61,115 (April 26 2001 Order), *order on reh'g,* 95 FERC ¶ 61,418 (2001) (June 19 Order) (in the April 26, 2001 Order, the Commission issued a prospective mitigation and market monitoring plan for wholesale sales through the organized real-time markets operated by the ISO; the Commission acted on requests for rehearing and clarification of the April 26 Order on June 19, 2001, modifying and expanding the mitigation plan, effective June 20, 2001). While the mitigation plan was primarily intended to control the real-time energy market, it also had a disciplining effect on congestion costs and eliminated the opportunity to profit from Gaming Practices. The ISO Market Analysis Report for June 2001 shows that the average price of real-time electricity in June decreased 62 percent to $104/MWh from the May average of $275/MWh and total congestion costs for June 2001 were $0.5 million, down from $7 million in May.

[2] The Staff Final Report listed a number of entities that may have had a partnership, alliance or other arrangement with Enron. Not all of these entities are addressed in this order. Commission Staff is conducting further analysis to determine if any further action is appropriate for these other entities.

[3] This order also directs the Partnership Entities to (1) inventory all revenues from their partnerships, alliances or other arrangements discussed below and (2) file, as part of their show cause responses, these revenue figures as well as file all related correspondence, e-mail, memoranda, tapes, phone logs, transaction data, billing statements and agreements.

3. This order complements an order being issued concurrently, in which the Commission (1) determines that certain conduct by a number of market participants, during the period January 1, 2000 to June 20, 2001, constituted Gaming Practices that violated the ISO and PX tariffs, (2) directs those who engaged in those Gaming Practices,in a trial-type evidentiary proceeding to be held before an ALJ, to show cause why their behavior during the relevant period does not constitute gaming and/or anomalous market behavior as defined in the ISO and PX tariffs, (3) directs the ALJ to hear evidence and render findings and conclusions quantifying the full extent of their conduct, and (4) provides that the ALJ may recommend the monetary remedy of disgorgement of unjust profits and any other additional, appropriate non-monetary remedies.[4] Gaming Practices for which the Gaming Practices Show Cause Order institutes a show cause proceeding involve: False Import; Congestion-Related Practices (Cutting Non-firm, Circular Scheduling, Scheduling Counterflows on Out-of-Service Lines, and Load Shift); Ancillary Services-Related Practices (Paper Trading and Double Selling); and Selling Non-Firm Energy as Firm.[5] Whereas the Gaming Practices Show Cause Order concerns allegations that a number of market participants engaged in Gaming Practices, this order addresses allegations that certain market participants engaged in Gaming Practices in concert with other market participants.[6]

4. This order benefits customers by establishing procedures to address activities inconsistent with the ISO and PX tariffs during the period January 1, 2000 to June 20, 2001, consistent with due process.

II. Background

5. By order issued on February 13, 2002, in Docket No. PA02–2–000, the Commission directed a Staff investigation into whether any entity manipulated prices in electricity or natural gas markets in the West or otherwise exercised undue influence over wholesale electricity prices in the West since January 1, 2000.[7]

6. Pursuant to the directive of the February 13, 2002 Order, Staff undertook a comprehensive fact-finding investigation, encompassing both data gathering and data analysis of physical and financial transactions in and out of the California bulk power marketplace and related markets during 2000–2001. Staff's investigation has included a review of a wide variety of factors and behaviors that may have influenced electric and natural gas prices in the West over this period.

7. In August 2002, Staff released its Initial Report on potential manipulation of electric and natural gas prices in these markets, in which it concluded certain conduct was gaming while other practices were legitimate practices.[8] The Initial Report noted that data requests were sent to over 130 sellers of wholesale electricity; entities from all sectors of the industry may have engaged in such trading practices. (Based on the analysis in the Initial Report, the ISO subsequently designed market screens in an effort to review its transaction data and identify potential transactions with characteristics indicative of these trading practices, including the practices that were identified by Staff as legitimate strategies; the ISO's results are discussed below.) Staff expressly noted in this Initial Report, however, that its investigation into certain matters was ongoing and that other areas of inquiry and recommendations not addressed in its Initial Report may be included in its Final Report.[9] The Staff Final Report on its fact-finding investigation was publicly released on March 26, 2003.[10]

8. Since 1998, the ISO and PX tariffs have contained provisions that identify and prohibit ''gaming'' and ''anomalous market behavior'' in the sale of electric power.[11] As explained in more detail below, the ISO tariff, through the ISO's Market Monitoring and Information Protocol (MMIP), defines gaming, in part, as ''taking unfair advantage of the rules and procedures set forth in the PX or ISO tariffs, Protocols or Activity Rules * * * to the detriment of the efficiency of, and of consumers in, the ISO Markets.'' [12] The ISO tariff, through the MMIP, defines anomalous market behavior, in part, as ''behavior that departs significantly from the normal behavior in competitive markets that do not require continuing regulation or as behavior leading to unusual or unexplained market outcomes.'' [13] The Staff Final Report, among other things, cites to a study by the ISO,[14] in which

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[4] American Electric Power Service Corp., 103 FERC ¶ 61,345 (2003) (Gaming Practices Show Cause Order).

[5] The Commission's analysis regarding what constitutes Gaming Practices is set forth in the Gaming Practices Show Cause Order and incorporated by reference here. *See* Gaming Practices Show Cause Order, 103 FERC ¶ 61,345 at P 35–67 (Section III–D, Gaming Practices and California Practices).

[6] The potential remedies in this case, as with the potential remedies in the Gaming Practices Show Cause Order (*see id.* at P 2 & n.3), would apply to the period January 1, 2000 to June 20, 2001 and would be in addition to any refunds owed for the period after October 2, 2000.

[7] Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002) (February 13, 2002 Order). The February 13, 2002 Order, of course, was not the beginning point of our investigation into the justness and reasonableness of the rates of public utility sellers into the ISO and PX markets. For a general recitation of this procedural history, including the series of events and circumstances giving rise to the California energy crisis, *see* San Diego Gas & Electric Co., *et al.*, 97 FERC ¶ 61,275 (2001) (December 19, 2001 Order).

[8] Initial Report on Company-Specific Separate Proceeding and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000, issued in August 2002.

[9] In the Initial Report, Staff also recommended that the Commission initiate FPA section 206 proceedings against Enron and three of its trading partners. *See* El Paso Electric Co., *et al.*, 100 FERC ¶ 61,188 (2002) (El Paso Electric); Portland General Electric Co. and Enron Power Marketing, Inc., 100 FERC ¶ 61,186 (2002) (Portland); Avista Corporation, *et al.*,100 FERC ¶ 61,187 (2002) (Avista Corp.). Those cases are in various stages of progress, with full or partial settlements having been proposed in some.

A settlement agreement between Trial Staff and Avista Corporation was filed on January 30, 2003 in Avista Corp. Comments in opposition to the agreement were filed on February 19, 2003, by the City of Tacoma, Washington and the California Attorney General. On May 15, 2003, Trial Staff amended its study in support of the settlement agreement and requested that the agreement be certified to the Commission. Additional comments were filed by Tacoma and California on May 27, 2003, with reply comments filed by Trial Staff and Avista Corporation. The settlement agreement is awaiting a determination by the Chief Judge on whether it should be certified. Moreover, on April 9, 2003, the Chief Judge issued an order in Avista Corp. in which he determined that the settlement or hearing in that proceeding will cover all issues raised by the Staff Final Report. Avista Corp. and Avista Energy Inc., Order of the Chief Judge Confirming Rulings Made at Prehearing Conference and Establishing Further Procedures, Docket No. EL02–115–000 (issued April 9, 2003). Therefore, this order does not address Avista Corp.

In the El Paso Electric proceeding, on May 28, 2003, the judge certified an uncontested settlement to the Commission with a recommendation that it be accepted. El Paso Electric Company, *et al.*, 103 FERC ¶ 63,036 (2003). Accordingly, this order does not address El Paso Electric.

Further, this order only addresses issues that are not being litigated in the on-going Portland proceeding.

[10] Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02–2–000 (March 26, 2003) (Staff Final Report). The Staff Final Report is available on the Commission's Web site at <<*http://www.ferc.gov/western*>>.

[11] *See* California Independent System Operator Corp., 82 FERC ¶ 61,327 at 62,291 (1998); California Power Exchange Corp., 82 FERC ¶ 61,328 at 62,296 (1998); *cf.* AES Southland, Inc., *et al.*, 94 FERC ¶ 61,248 at 61,873 & nn. 25–27, *order approving stipulation and consent agreement,* 95 FERC ¶ 61,167 (2001).

In relevant part, the terms of the two tariffs, the ISO's tariff and the PX's tariff, are substantially identical. Thus, for convenience, we often refer below only to the ISO's tariff.

[12] ISO's MMIP 2.1.3. As explained below, the MMIP is part of the ISO tariff.

[13] MMIP 2.1.1.

[14] *See* Department of Market Analysis, California ISO, Analysis of Trading and Scheduling Strategies

the ISO identifies activities that purport to fall within the definitions of gaming and/or anomalous market behavior identified in the ISO tariff, and which occurred during the period January 1, 2000 to June 20, 2001.

9. In addition, on November 20, 2002, the Commission issued an order that allowed parties in Docket Nos. EL00–95–000, EL00–95–048, EL00–98–000 and EL00–98–042 to conduct additional discovery into market manipulation by various sellers during the western power crisis of 2000 and 2001, and specified procedures for adducing this information.[15] The Discovery Order allowed the parties to conduct discovery, review the material and submit directly to the Commission additional evidence and proposed new and/or modified findings of fact based upon proffered evidence that is either indicative or counter-indicative of market manipulation, no later than February 28, 2003.[16] On February 10, 2003, the Commission issued an order affording parties an opportunity to respond to submissions made by adverse parties.[17] The Rehearing Order allowed parties to file reply comments directly with the Commission by March 17, 2003. The Commission in a later order extended the February 28, 2003 deadline to March 3, 2003, and allowed the reply comments to be filed by March 20, 2003.[18] These filings are referred to as the ''100 Days Evidence.''

10. On March 5, 2003, the Commission issued a notice providing that the Commission intended to release: (1) All documents submitted in Docket No. PA02–2–000, except documents obtained from other Federal agencies in accord with the Federal Records Act, 44 U.S.C. § 3510(b), and (2) all documents submitted in response to the Discovery Order and Rehearing Order.[19] On March 21, 2003, the Commission issued an order directing the release of information no later than March 26, 2003 in accordance with the above notice.[20]

11. Finally, by order issued on April 2, 2003,[21] the Commission provided for the submission of briefs on Commission Staff's interpretation of the MMIP provisions concerning gaming and anomalous market behavior as prohibiting certain practices by market participants. Thirty-three parties filed in response. Their comments are discussed below in the section on the MMIP provisions.

III. Discussion

A. The Commission's Authority in This Case

1. Commission Authority with Respect to the Period Prior to October 2, 2000

12. In our July 25, 2001 order[22] and the November 1, 2000 Order in the California Refund Proceeding, we established a refund effective date (October 2, 2000) concerning the market manipulation allegations at issue in that proceeding, based on the evidence available at that time and the refund limitations set forth in section 206 of the Federal Power Act (FPA).[23] As such, we did not include within the scope of that proceeding, conduct relating to a portion of the period at issue here, *i.e.*, for the period from January 1, 2000 to October 2, 2000. In doing so, however, we noted that the Commission could take action to address earlier periods if, during those earlier periods, a seller did not charge the filed rate or violated tariffs.[24] Thus, with respect to the period prior to the October 2, 2000 refund effective date, the Commission can order disgorgement of monies above the post October 2, 2000 refunds ordered in the California Refund Proceeding, if it finds violations of the ISO and PX tariffs and finds that a monetary remedy is appropriate for such violations. Further, while refund protection has been in effect for sales in the ISO and PX short-term energy markets since October 2, 2000, the Commission can additionally order additional disgorgement of unjust profits for tariff violations that occurred after October 2, 2000 (*i.e.*, to June 20, 2001).[25]

2. Commission Authority With Respect to Governmental Entities

13. We note that several of the Partnership Entities are governmental entities, subject to the jurisdictional exemption set forth in section 201(f) of the FPA.[26] In the July 25, 2001 Order, as reiterated in the December 19, 2001 Order, the Commission found that refund liability should apply to energy sold in the ISO and PX short-term energy markets, including that sold by governmental entities. Here, as well, we find that the potential remedies specified in this order, including the disgorgement of unjust profits for the pre-October 2, 2000 period, should apply to sales made by governmental entities as well as to those sales by the other Partnership Entities.

14. In the July 25, 2001 Order, the Commission explained that its jurisdiction attached to ''the subject matter of the affected transactions: wholesale sales of electric energy in interstate commerce through a Commission-regulated centralized clearinghouse that set a market clearing price for all wholesale seller participants, including [governmental entities]'' and thus that jurisdiction may properly be asserted over sales by governmental entities.[27] The Commission continued:

Described in Enron Memos, (October 4, 2002), publicly released on January 6, 2003, available at <*http://www.caiso.com/docs/2003/03/26/2003032613435514289.pdf*> (last viewed June 9, 2003); Addendum to October 4, 2002 Report on Analysis of Trading and Scheduling Strategies Described in Enron Memos: Revised Results for Analysis of Potential Circular Schedules (''Death Star'' Scheduling Strategy), (January 17, 2003), *available at <<http://www.caiso.com/docs/2003/03/26/2003032613593115924.pdf>>* (last viewed June 9, 2003); and Supplemental Analysis of Trading and Scheduling Strategies Described in Enron Memos, (June 2003), *available at <<http://www.caiso.com/docs/2003/06/18/2003061806053424839.pdf>>* (last viewed June 18, 2003), (collectively, ISO Report). The ISO released its June 2003 Supplemental Analysis after the issuance of the Staff Final Report. The Commission has reviewed the ISO's Supplemental Analysis.

[15] *San Diego Gas & Elec. Co.* v. *Sellers of Energy and Ancillary Serv., et al.*, 101 FERC ¶ 61,186 (2002) (Discovery Order).

[16] *Id.* at P 27.

[17] *San Diego Gas & Elec. Co.* v. *Sellers of Energy and Ancillary Serv., et al.*, 102 FERC ¶ 61,164 (2003), *reh'g pending* (Rehearing Order).

On the same day, the Commission expanded the coverage of these responses to include the proceeding in Docket No. EL01–10–007. *See Puget Sound Energy, Inc., et al.* v. *All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement;* 102 FERC ¶ 61,163 (2003).

[18] *San Diego Gas & Elec. Co.* v. *Sellers of Energy and Ancillary Serv., et al.*, 102 FERC ¶ 61,194 (2003) (February 24, 2003 Order).

[19] Notice of Intent to Release Information and Opportunity to Comment, 68 Fed. Reg. 11,821 (March 12, 2003).

[20] Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, *et al.*, 102 FERC ¶ 61,311 (2003).

[21] Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices, 103 FERC ¶ 61,016 (2003).

[22] *San Diego Gas & Electric Co.* v. *Sellers of Energy and Ancillary Serv., et al.*, 96 FERC ¶ 61,120 at 61,506–11 (July 25, 2001 Order), *order on clarification and reh'g,* 97 FERC ¶ 61,275 (2001).

[23] 16 U.S.C. § 824e (2000).

[24] 96 FERC at 61,507–08, *citing* Washington Water Power Co., 83 FERC ¶ 61,282 (1998). *See also* Jack J. Gynsburg v. Rocky Mountain Natural Gas Co., 90 FERC ¶ 61,247 at 61,825–26, *reh'g denied,* 93 FERC ¶ 61,180 at 61,587 (2000); Public Service Co. of Colorado, 85 FERC ¶ 61,146 at 61,588 (1998).

[25] *See* December 19, 2001 Order, 97 FERC at 61,239 (the Commission can order equitable remedies, such as disgorgement, for unjust enrichment); *accord* AES Southland, Inc. and Williams Energy Marketing & Trading Corp., 95 FERC ¶ 61,167 at 61,538 (2001); *Transcontinental Gas Pipe Line Corp.* v. *FERC,* 998 F.2d 1313 (5th Cir. 1993).

[26] *See* 16 U.S.C. § 824(f) (2000).

[27] July 25, 2001 Order, 96 FERC at 61,512; *accord id.* at 61,511–13.

Here, the central transactions, wholesale sales of energy in interstate commerce, were governed by FERC-approved rules and a FERC-jurisdictional ISO and PX * * * [and] thus fell within FERC's jurisdiction regardless of the jurisdictional nature of the sellers or buyers. Further, the centralized wholesale spot electricity markets operated by the California ISO and PX were established (and have been modified) subject to FERC review and approval. Because the market did not exist prior to FERC authorization, all those who participated in the market had to recognize the controlling weight of FERC authority. Moreover, it is fair that all those who benefitted from this market also bear responsibility for remedying any potential unlawful transactions that might have occurred in the market.

* * * * *

Consequently, if the price for a specific sale is found to be unjust and unreasonable, then all sellers who obtained that price received an unjust and unreasonable rate. To the extent the Commission determines refunds are an appropriate remedy for that sale, consumers can only be made whole by refunds from all sellers who received the excessive price. As [governmental entity] sellers of energy and ancillary services accounted for up to 30 percent of all sales in the California centralized ISO and PX spot markets, excluding them from a potential refund remedy could have a serious detrimental effect on consumers.[28]

15. This rationale applies equally in the context of violations of MMIP provisions that prohibit gaming and/or anomalous market behavior, as such provisions apply to all transactions in the California market.

B. The MMIP's Provisions Concerning Gaming and/or Anomalous Market Behavior

1. Provisions Cited in the Staff Final Report

16. Concerning the Commission's remedial authority with respect to the Partnership Entities' alleged practices, the Staff Final Report notes that the MMIP is one of several protocols that the Commission required the ISO and PX to include as part of their filed rate schedules.[29] The Staff Final Report also cites the underlying purposes of the MMIP,[30] discussed in MMIP 1.1 (Objectives) which provides in pertinent part:

This Protocol sets forth the workplan and, where applicable, the rules under which the ISO will monitor the ISO Markets to identify abuses of market power, to ensure to the extent possible the efficient working of the ISO Markets immediately upon commencement of their operation, and to provide for their protection from abuses of market power in both the short term and the long term, and from other abuses that have the potential to undermine their effective functioning or overall efficiency in accordance with Section 16.3 of the ISO Tariff.[31]

17. The Staff Final Report also cites part 2 of the MMIP which specifies what are termed ''Practices Subject to Scrutiny.'' Among those practices are two that the Staff Final Report identifies as being of particular concern to the Commission; the first is ''gaming,'' and the second is ''anomalous market behavior.'' [32] Gaming is defined at Section 2.1.3 of the ISO's MMIP as follows:

[T]aking unfair advantage of the rules and procedures set forth in the PX or ISO Tariffs, Protocols or Activity Rules, or of transmission constraints in periods in which exist substantial Congestion, to the detriment of the efficiency of, and of consumers in, the ISO Markets. ''Gaming'' may also include taking undue advantage of other conditions that may affect the availability of transmission and generation capacity, such as loop flow, facility outages, level of hydropower output or seasonal limits on energy imports from out-of-state, or actions or behaviors that may otherwise render the system and the ISO Markets vulnerable to price manipulation to the detriment of their efficiency.[33]

18. Anomalous market behavior is defined at Section 2.1.1 of the ISO's MMIP:

''Anomalous market behavior'' * * * is * * * behavior that departs significantly from the normal behavior in competitive markets that do not require continuing regulation or as behavior leading to unusual or unexplained market outcomes. Evidence of such behavior may be derived from a number of circumstances, including: withholding of Generation capacity under circumstances in which it would normally be offered in a competitive market; unexplained or unusual redeclarations of availability by Generators; unusual trades or transactions; pricing and bidding patterns that are inconsistent with prevailing supply and demand conditions, *e.g.*, prices and bids that appear consistently excessive for or otherwise inconsistent with such conditions; and unusual activity or circumstances relating to imports from or exports to other markets or exchanges.[34]

2. The Staff Final Report's Interpretation of the MMIP [35]

19. In brief, the Staff Final Report interprets the MMIP as ''rules of the road'' which the Commission may enforce, and as barring the kinds of practices at issue here. The Staff Final Report explains that the MMIP enumerates objectionable practices, the MMIP authorizes the ISO to impose ''sanctions and penalties'' or to refer matters to the Commission for appropriate sanctions or penalties,[36] and the MMIP was part of the ISO and PX tariffs on file with the Commission during the relevant period.[37] Accordingly, entities that transact through the ISO or PX and engage in such enumerated practices are in violation of filed tariffs. Further, the Staff Final Report concludes that various practices were violations of the MMIP and thus violations of the ISO's and PX's filed tariffs.

3. Comments Regarding the Staff Final Report's Interpretation of the MMIP

a. Supporting Comments

20. Several commenters supported the Commission Staff's interpretation of the MMIP.[38] They argue that: (1) The MMIP is on file with the Commission as part of a filed tariff, and has been for some time, and thus can be enforced by the Commission; (2) the MMIP applies to all market participants, and is expressly intended to identify abuses and to provide for protection from such abuses;

[28] *Id.* at 61,513 (footnote omitted); *accord id.* at 61,511–13. On rehearing, the Commission reaffirmed its jurisdiction over these transactions. December 19, 2001 Order, 97 FERC at 62,180–87.

[29] As further explained below, the MMIP has been part of the ISO's and PX filed tariffs since 1998.

[30] Staff Final Report, ch. VI at 6–7.

[31] MMIP 1.1.

[32] Staff Final Report, ch. VI at 7–10.

[33] MMIP 2.1.3.

[34] MMIP 2.1.1.5 further provides that:

The Market Surveillance Unit shall evaluate, on an ongoing basis, whether the continued or persistent presence of such circumstances indicates the presence of behavior that is designed to or has the potential to distort the operation and efficient functioning of a competitive market, *e.g.*, the strategic withholding and redeclaring of capacity, and whether it indicates the presence and exercise of market power or of other unacceptable practices.

[35] *See* Staff Final Report, ch. VI at 8–10.

[36] MMIP 7.3.

[37] As the Staff Final Report notes, and as discussed in more detail below, the MMIP has been part of the ISO and PX tariffs on file with the Commission since 1998, which encompasses the relevant period of January 1, 2000 through June 20, 2001.

[38] *E.g.,* the California Parties, which include the California Attorney General and the California Public Utilities Commission, among others.

(3) the MMIP provides that the practices that are expressly subject to scrutiny are gaming and anomalous market behavior, and each is defined in some detail; (4) while the MMIP does not expressly prohibit such Gaming Practices as ''ricochet'' or ''get shorty,'' such a standard would require a level of detail that would be impossible to achieve, and it would require anticipating all of the myriad ways that could be dreamed up to ''game'' the markets, and to spell them all out in the MMIP; (5) it is hard to conceive that market participants as sophisticated as those here did not realize that the kind of trading practices at issue here were inappropriate; and (6) as part of a filed tariff, the MMIP ultimately is for the Commission to interpret and enforce, and the MMIP itself recognizes that the Commission is the ultimate enforcement authority.

b. Opposing Comments

21. Several parties filed comments opposing Commission Staff's interpretation of the MMIP.[39] They argue that: (1) The MMIP was intended to provide direction to the ISO and not be a standard by which the Commission prosecuted market participants' conduct; (2) the MMIP does not expressly bar any trading practices; and (3) the MMIP does not identify with precision the particular strategies that are subject to scrutiny, and thus, it is too vague to serve as a standard by which to judge market participants' conduct. They argue that the Commission cannot hold market participants responsible in these circumstances, when they have not had fair notice that the trading practices at issue here are prohibited. Further, they contend that there is extrinsic evidence indicating that market participants, particularly including the ISO itself, did not view the MMIP as a bar to the kind of trading practices at issue here or as a basis for ordering disgorgement of unjust profits. In this respect, the parties argue that the Commission to date has never indicated that it viewed the MMIP as a bar to such conduct; its orders, to the extent that they have touched on such matters at all, have, in fact, implied the contrary, according to the opposing commenters. They also suggest that if the Commission initiates an investigation, it would discourage new investment.

c. Other Comments

22. The California Parties also argue that other tariff provisions may have been violated, citing the following tariff provisions from the ISO Tariff: (1) Section 5.5.1 (Planned Maintenance); (2) Section 5.5.3 (Forced Outages); (3) Section 5.3 (Identification of Generating Units); (4) Section 5.4 (Western Systems Coordinating Council (WSCC) Requirements); (5) Section 2.2.7.2 (Submitting Balanced Schedules); (6) Section 2.5.22.11 (Failure to Conform to Dispatch Instructions); and (7) Section 20.3 (Confidential Information).

3. Commission Determination

23. In sum, the MMIP puts market participants on notice regarding their rights and obligations in the marketplace. It serves as the ''rules of the road'' for market participants. It also contemplates that these rules will be enforced by the Market Surveillance Unit, in the form of monitoring and reporting, or by the appropriate body or bodies (including this Commission), in the form of corrective actions.[40] While the Commission's role, in this regard, may be triggered by the referral procedures outlined in the MMIP, the Commission also possesses the authority to enforce a filed tariff even in the absence of a referral.[41] That is, in the Staff Final Report, Staff concludes, and we agree, that one key function of the MMIP is to put market participants on notice as to the rules of the road for market participants, so that the markets operated by the ISO are free from abusive conduct and may function as efficiently and competitively as possible. The Staff Final Report finds, and again we agree, that market participants cannot reasonably argue that they were *not* on notice that conduct such as the Gaming Practices discussed below would be a violation of the ISO and PX tariffs. In short, the key function of the MMIP is to put market participants on notice of what practices would be subject to monitoring and, potentially, corrective or enforcement action, by either the ISO in the first instance or by the Commission, whose role includes enforcing the terms and conditions of filed rate schedules. Accordingly, it is appropriate for us to institute this proceeding.

24. MMIP 2.3 and its several subparts address how the ISO, including the Market Surveillance Unit, is to respond to market participants engaging in any of the suspect practices delineated in the MMIP. While the MMIP outlines intermediate steps (such as arranging for alternative dispute resolution or proposing language changes to the tariff), ultimately, the MMIP directs the Market Surveillance Unit to refer matters to this Commission for enforcement.[42] The MMIP contemplates that, while the ISO may try to correct misconduct on its own, the Commission is to be ''the court of last resort'' for misconduct committed by market participants, including the gaming and/or anomalous market behavior misconduct defined in the MMIP. While part 2 of the MMIP enumerates suspect practices, MMIP 7.3 authorizes the ISO to impose ''sanctions and penalties'' or, as particularly relevant here, to refer matters to the Commission for appropriate sanctions or penalties.

25. We agree with the Staff Final Report that if entities are found to have engaged in the identified misconduct, they will have violated the ISO's and PX's filed tariffs even if such formal procedures as referral outlined in the MMIP did not occur. The Commission can enforce a filed tariff even when there are processes in that tariff which, had they been used, would have assisted the Commission. Ultimately, the Commission can enforce a filed tariff with or without the assistance of a complaint or a referral.[43]

26. In this regard, we note that the ISO and PX each initially submitted its MMIP (along with other protocols), for informational purposes only, on October 31, 1997. The Commission, however, found that the protocols, including the MMIP, ''govern a wide range of matters which traditionally and typically appear in agreements that should be filed with and approved by the Commission.'' [44] The Commission accepted the protocols, including the MMIP, for filing, and directed the ISO and PX each to post the protocols on its Internet site and to file its complete protocols pursuant to section 205 of the FPA within 60 days of the ISO's and PX's Operations Date (that date ultimately was April 1, 1998).[45] Accordingly, the MMIP has been part of the ISO's and PX's filed tariffs since 1998, which includes the period January 1, 2000 to June 20, 2001 at issue here.

27. The Gaming Practices Show Cause Order also addresses the California Parties' argument that there may have been violations of other tariff provisions, besides the MMIP. That order determines that the WSCC requirements cited by the California Parties make no reference to gaming

[39] *E.g.,* California Generators; Competitive Supplier Group; Enron; Reliant Resources, Inc.

[40] Sections 2.3, 3.3.4 and 7.3 of the MMIP outline the procedures to be followed by the ISO and the PX when a market participant is found to have engaged in any of the suspect practices delineated in the MMIP.

[41] 16 U.S.C. §§ 824d, 824e, 825h (2000).

[42] MMIP 3.3.4.

[43] 16 U.S.C. §§ 824d, 824e (2000).

[44] Pacific Gas and Electric Co., *et al.*, 81 FERC ¶ 61,320 at 62,471 (1997).

[45] *Id.* The ISO (in Docket No. EC96–19–029, *et al.*) and PX (in Docket No. EC96–19–28, *et al.*) each made that compliance filing on June 1, 1998.

strategies or anomalous market behavior (as does the MMIP), and therefore, those provisions do not provide a basis for finding gaming and/or anomalous market behavior. That order also finds that conduct involving arbitrage, underscheduling and confidentiality of certain data either (a) constituted Gaming Practices, but did not warrant remedies, or (b) did not constitute Gaming Practices. Further, that order states that the Commission is currently investigating alleged violations related to physical withholding.

C. Overview of PX and ISO Operations

28. As explained in more detail in the Staff Final Report and the Gaming Practices Show Cause Order, the ISO operates much of the transmission grid in California and is responsible for real-time operations, such as continually balancing generation and load and managing congestion on the transmission system it controls. The PX was created primarily to operate two markets in which energy was traded on an hourly basis. These were the day-ahead and day-of markets. These markets established a single clearing price for each hour across the entire ISO control area, provided there were no transmission constraints. Where transmission congestion existed, a separate clearing price was established for each transmission constrained area or zone in California. Each zonal clearing price was based on adjustment bids submitted by sellers and buyers. The adjustment bids represented the value to an entity of increasing or decreasing (*i.e.*, adjusting) its use of the system. In essence, this is a redispatch of the system to deal with congestion.[46]

29. The ISO operates a variety of markets in order to procure the resources necessary to reliably operate the transmission system, including a day-ahead market and an hour-ahead market for relieving transmission congestion and an energy market to continuously balance the system's energy needs in real time. The latter, real-time market is the final energy market to clear chronologically, after all other markets in the region clear. Bilateral spot markets at trading hubs outside California generally operated in the time period between the close of the PX market and the ISO real-time market.[47]

D. Alleged Partnership Gaming Involving Enron

30. In this section, we discuss evidence indicating that Enron worked in concert with other entities, both inside and outside California, to implement Gaming Practices in ways that manipulated market outcomes. We also discuss evidence that other entities may have had similar agreements with other market participants.

1. Alleged Partnership Gaming[48]

31. Enron created a marketing program based on the use of other entities' assets, thus avoiding large capital expenditures and the risk of owning its own resources, to carry out its various Gaming Practices. Enron focused not only on partnerships and alliances with investor-owned utilities, but also on smaller utilities, such as public utility districts, municipalities, and qualifying facilities.[49] Enron, using these Partnerships with others, gained market share, acquired commercially sensitive data, acquired decisionmaking authority, and promoted reciprocal dealings and equity sharing of profits, among other things, as explained below. Enron formed these Partnerships without filing the agreements with the Commission or notifying the Commission as required under its market-based rate authorizations.[50]

32. A company's business strategy is devised by top management. In Enron's case, the business model is described in broad-brush terms in Enron documents as ''Skilling's 'Enron Network' story.'' Its promotional literature entitled ''Why customers choose Enron,'' was intended to convince others that using Enron, with its market knowledge of complicated markets such as in California, was a good business decision; using Enron would save these entities labor and systems costs, and importantly, using Enron would be profitable.

33. Under this business model, the nature of Enron's interaction with its business partners developed over time. For example, Enron would first offer ''consulting'' services that allowed entities to outsource certain tasks rather than manage these tasks themselves. Enron gradually developed these relationships by expanding its services in an attempt to effectively control the assets of others. Enron's compensation for these ''services'' usually started with a fee structure (*e.g.,* a charge/MWh for scheduling energy with the PX). However, as the original relationship grew into a more comprehensive partnership, alliance or other arrangement, the compensation typically changed to an equity basis (share of profits) when the marketing of wholesale power was involved. An Enron Services Handbook explains that, in most instances, profits from marketing energy were split on a 50/50 basis while profits from capacity sales for ancillary services were split 25/75, with 25 percent going to Enron and 75 percent to its partner.

34. The Staff Final Report cites a presentation at an Energy West Power Business Review Meeting that characterizes this business strategy bluntly, under a section entitled ''Gaining Control of Assets.'' The presentation states:

Currently pursuing two strategies. The first is gaining control of a variety of small resources or capabilities around the west. For example, the combination of El Paso Electric, Las Vegas Cogen, Valley Electric, and Glendale joint venture provide us with a useful mix of loads and resources in the southwest. These transactions require relatively little capital, but will require automated IT links to customers and more people in the logistics group. [Citation omitted.]

35. Essentially, Enron developed initial business relationships with entities, which over time evolved into partnerships, alliances and other arrangements in which Enron could gain control of decisionmaking in a way that maximized profits for itself and its business partners. The Staff Final Report cites the summary of the Energy West Power Business Review Meeting, which states:

[46] For a more detailed description of the day-ahead auction process, see the Staff Final Report, ch. VI at 5.

[47] *Id.* at 5–6.

[48] The Staff Final Report (ch. VI at 37–44) discusses evidence of various practices engaged in by Enron in concert with other market participants. This evidence demonstrates how Enron and the other named market participants appear to have used their partnerships, alliances or other arrangements to engage in various gaming practices. The show cause proceeding ordered herein will address whether Enron and the other named market participants used their partnerships, alliances or other arrangements to engage in the Gaming Practices for which the Commission seeks appropriate remedies in the Gaming Practices Show Cause Order, but here involving such conduct by market participants acting in concert with other market participants.

[49] The other market participants allegedly involved in Partnership Gaming with Enron are: City of Glendale, California (Glendale); City of Redding, California (Redding); Colorado River Commission; Las Vegas Cogeneration, L.P. (Las Vegas Cogeneration); Modesto Irrigation District (Modesto); Montana Power Company (now d/b/a NorthWestern Energy, LLC) (Montana Power); Northern California Power Agency (NCPA); Powerex Corporation (f/k/a British Columbia Power Exchange Corporation) (Powerex); Public Service Company of New Mexico (PSNM); and Valley Electric Association, Inc. (Valley Electric).

[50] *See* Enron Power Marketing, Inc., *et al.,* 103 FERC ¶ 61,343 (2003) (*Enron*); *see also* 16 U.S.C. § 824d (2000); Enron Power Marketing, Inc., 65 FERC ¶ 61,305 at 62,405 (1993); Enron Energy Services, Inc., 81 FERC ¶ 61,267 at 62,319 (1997).

(1) Currently provide scheduling services to El Paso Electric, Glendale, CFE (Mexico), Tosco, Washington Water Power, and Enron Energy Services.

(2) Use scheduling as a platform that will dovetail with click trade and that will lead to larger transactions that will make more money (*e.g.,* joint venture with the City of Glendale). [Footnote omitted.]

36. In this regard, the Handbook contains a list of California market conditions with instructions for Enron employees concerning whom to call and what steps the partner should follow in order to take advantage of a particular market situation. For example, if prices in the California market are high, the Enron employee would refer to the handbook section entitled ''Who do you call and what action to take?'' The Enron employee first decides if the price is high enough to be profitable to the ''customer.'' If it is profitable, the Enron employee would: ''generate or import and fake, or increase, load.'' In this situation, the Enron employee could call, for example, Glendale or Valley Electric and instruct them to increase imports into the California ISO control area; the Handbook lists the transmission paths to be used. Or the Enron employee could call, for example, Redding and instruct it to increase generation in northern California to implement this strategy. The pricing structure for this strategy specifies an even 50/50 split of profits between Enron and its partner. In another example, the Handbook alerts the Enron employee to check to see if there are high ancillary service prices. In that situation, the Enron employee should ''call Glendale, Puget and El Paso Electric to try to get ancillary services bids in'' and ''call customers and have them 'bid in' more.''

37. The Handbook also includes a list of steps to take if the prices in California are low. In this situation, the instructions call for the opposite strategy: ''artificially reduce load and export.'' The same counterparties are listed with corresponding delivery points for exporting their resources out of California. A similar pricing structure is also listed. Other Enron documents describe arrangements that go beyond joint coordinated activity and describe total Enron control of decisionmaking authority.[51]

38. As its relationship with a customer grew, Enron also collected data from the customer, which it then used for its own trading and marketing activities. For example, its strategy allowed ''Enron to know as much or more about the customer's near term position.'' Finally, under this strategy, Enron planned to:

Store operational data that the customer's merchant group would not normally be storing. Provide service around analysis and manipulation of data. [Enron North America] would own the data—a potential to lock customers in—if they leave [Enron North America] their data stays here.

39. The Staff Final Report states that the evidence indicates that Enron, on its own, could not have implemented all of its Gaming Practices; it was only with the cooperation of others that these strategies could have been executed. We agree. It appears that Enron used these partnerships and alliances to employ Gaming Practices in violation of the ISO and PX tariffs. At Enron's direction, other entities both inside and outside California made business decisions that capitalized on market conditions in an effort to maximize profits from their assets on a coordinated basis, and changed market outcomes. Market problems and dysfunctions, in short, were considered opportunities.

40. Further, as discussed in an order being issued concurrently with this order, Timothy N. Belden and Jeffrey S. Richter, former Enron executives, signed plea agreements in which they state that they engaged in fraudulent schemes in the California markets in order to obtain increased revenue from wholesale electricity customers and other market participants in California.[52]

41. In sum, it appears that Enron systematically acted in partnership or otherwise in alliance with others, without the Commission's knowledge, to game the market. The collective behavior of these entities turned defects in market rules and market structures into profit-making opportunities for Enron and its partners.

42. Based on the analysis provided in the Staff Final Report and the evidence described in the Staff Final Report, we find that Enron and the other entities with whom it had partnership, alliance or other arrangements like those described above appear to have jointly engaged in market manipulation schemes that had profound adverse impacts on market outcomes, and that violated the ISO and PX tariffs for which the monetary remedy of disgorgement of unjust profits and other appropriate, additional non-monetary remedies may be appropriate. Accordingly, we institute a show cause proceeding with respect to the alleged Partnership Gaming involving Enron, as discussed below.

2. Other Alleged Partnership Gaming

43. The Staff Final Report states that other entities appear to have engaged in promotional activities similar to Enron in an attempt to form strategic alliances. For example, according to the Staff Final Report, Sempra Energy Trading Corporation (Sempra) and PSNM may have competed with Enron in an attempt to perform similar services for El Paso Electric Company. The Staff Final Report further states, and the California Parties argue, that other evidence indicates that various entities appear to have had agreements with other market participants that had similar attributes as the Enron partnership, alliance and other arrangements discussed above (*e.g.,* coordinating activities). These apparent partnerships, alliances or other arrangements are alleged to be between: (1) Sempra and Eugene Water and Electricity Board (EWEB), Coral Power, LLC (Coral), or PSNM; (2) Coral and Glendale; and (3) PSNM and Aquila, Inc. (Aquila), Constellation Power Source, Inc. (Constellation), El Paso Merchant Energy, L.P. (El Paso Merchant), Enron, Idaho Power Company (Idaho Power), Koch Energy Trading, Inc. (Koch), MIECO, Morgan Stanley Capital Group (Morgan Stanley), PECO, PacifiCorp, Poweerex, Sempra or TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California) Inc. (TransAlta).[53]

44. Based on the analysis provided in the Staff Final Report and the evidence described in the Staff Final Report, we find that these entities, through partnership, alliance or other arrangements like those described above appear to have jointly engaged in market manipulation schemes that had profound adverse impacts on market outcomes, and that violated the ISO and PX tariffs for which the monetary remedy of disgorgement of unjust profits and other appropriate, additional non-monetary remedies may be appropriate. Accordingly, we institute a show cause proceeding with respect to the alleged Partnership Gaming, as discussed below.

[51] The Staff Final Report notes that, in an August 22, 2000 West Mid-Market Quarterly Business Review, Enron states that it ''touched/managed 3,500 MW/day.'' Staff Final Report, ch. VI at 41.

[52] *See Enron,* 103 FERC ¶ 61,343 at P 54 (2003) (citing U.S. v. Timothy N. Belden, (N.D. Cal. Case No. CR02–0313–MJJ); U.S. v. Jeffrey S. Richter, (N.D. Cal. Case No. CR03–0026–MJJ).

[53] *See* Staff Final Report, ch. VI at 44. *See also* (Exh. No. CA–1) (100 Days Testimony of California Parties' witness Dr. Fox-Penner), citing Exh. No. CA–187, regarding California Parties' allegations of partnership gaming involving PSNM.

E. Show Cause Order and Institution of Trial-Type Evidentiary Proceeding

45. As described above, we find that the Partnership Entities identified above, through their partnerships, alliances or other arrangements, may have engaged in Gaming Practices as identified in the Gaming Practices Show Cause Order, that violated the ISO's and PX's filed tariffs.

46. Accordingly, we require these entities to show cause, in a trial-type evidentiary proceeding to be held before an ALJ, why they should not be found to have engaged in Gaming Practices in violation of the ISO's and PX's tariffs.[54] They shall submit their show cause responses within 30 days of the date of this order.

47. We also require the Partnership Entities to (1) inventory all revenues from their partnerships, alliances or other arrangements discussed above and (2) file these revenue figures as well as file all related correspondence, e-mail, memoranda, tapes, phone logs, transaction data, billing statements and agreements as part of their show cause responses. This requirement applies to both sides of an agreement regardless of whether the entity is supplying or receiving service. If a Partnership Entity does not provide this information and it is later discovered that such agreements exist, that may be grounds for other possible remedies.

48. In addition, we direct the ALJ to hear evidence and render findings and conclusions quantifying the full extent to which the entities named herein may have been unjustly enriched as a result of their conduct,[55] and the ALJ may recommend the monetary remedy of disgorgement of unjust profits and any other additional, appropriate non-monetary remedies. For example, the ALJ may consider non-monetary remedies such as revocation of a Partnership Entity's market-based rate authority and revisions to a Partnership Entity's code of conduct if the ALJ finds such remedies appropriate.[56]

49. Given the commonality of issues of law and fact presented herein, we consolidate Docket Nos. EL03–180–000, EL03–181–000, EL03–182–000, EL03–183–000, EL03–184–000, EL03–185–000, EL03–186–000, EL03–187–000, EL03–188–000, EL03–189–000, EL03–190–000, EL03–191–000, EL03–192–000, EL03–193–000, EL03–194–000, EL03–195–000, EL03–196–000, EL03–197–000, EL03–198–000, EL03–199–000, EL03–200–000, EL03–201–000, EL03–202–000 and EL03–203–000, for purposes of hearing and decision.

The Commission Orders:

(A) The Partnership Entities are hereby directed to submit show cause responses within 30 days of the date of this order, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held in Docket Nos. EL03–180–000, EL03–181–000, EL03–182–000, EL03–183–000, EL03–184–000, EL03–185–000, EL03–186–000, EL03–187–000, EL03–188–000, EL03–189–000, EL03–190–000, EL03–191–000, EL03–192–000, EL03–193–000, EL03–194–000, EL03–195–000, EL03–196–000, EL03–197–000, EL03–198–000, EL03–199–000, EL03–200–000, EL03–201–000, EL03–202–000 and EL03–203–000: (1) Where the Partnership Entities shall show cause why they should not be found to have jointly engaged in the above-described Gaming Practices in violation of the ISO's and PX's tariffs; and (2) where the appropriate remedies may be identified and quantified, as discussed in the body of this order.

(C) Any interested person desiring to be heard in these proceedings should file a notice of intervention or motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214), within 21 days of the date of this order.

(D) An administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days of the filing of the show cause submissions ordered in Ordering Paragraph (A) above, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(E) Docket Nos. EL03–180–000, EL03–181–000, EL03–182–000, EL03–183–000, EL03–184–000, EL03–185–000, EL03–186–000, EL03–187–000, EL03–188–000, EL03–189–000, EL03–190–000, EL03–191–000, EL03–192–000, EL03–193–000, EL03–194–000, EL03–195–000, EL03–196–000, EL03–197–000, EL03–198–000, EL03–199–000, EL03–200–000, EL03–201–000, EL03–202–000 and EL03–203–000 are hereby consolidated for purposes of hearing and decision.

(F) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

By the Commission. Commissioner Massey dissented in part with a separate statement attached

Magalie R. Salas,

Secretary.

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION

	Docket No.
Enron Power Marketing, Inc. and Enron Energy Services Inc	EL03–180–000
Aquila, Inc	EL03–181–000
City of Glendale, California	EL03–182–000
City of Redding, California	EL03–183–000

[54] We incorporate the Staff Final Report and the underlying record in Docket No. PA02–2–000 by reference into the record in this proceeding.

[55] We will permit the parties to introduce relevant evidence from the 100 Days Evidence proceeding. *See* San Diego Gas & Electric Co., 101 FERC ¶ 61,186 (2002) (allowing California parties 100 days, concluding February 28, 2003, to conduct discovery into market manipulation by various sellers during the western power crisis of 2000 and 2001).

As discussed in the Staff Final Report and in the body of this order, there is evidence of gaming and/or anomalous market behavior sufficient to require the Partnership Entities to show cause why they should not be found to have employed Gaming Practices in violation of the ISO's and PX's tariffs. As a result, the burden of going forward will be placed on the Partnership Entities. However, the ultimate burden is upon the Commission. To that end, the Commission is aware that many parties in California and elsewhere in the West have sought a forum in which to address the issues raised in this proceeding. Those parties may participate in this proceeding upon requesting and being granted intervenor status.

[56] *See supra* P 1.

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION—Continued

	Docket No.
Colorado River Commission	EL03–184–000
Constellation Power Source, Inc	EL03–185–000
Coral Power, LLC	EL03–186–000
El Paso Merchant Energy, L.P	EL03–187–000
Eugene Water and Electricity Board	EL03–188–000
Idaho Power Company	EL03–189–000
Koch Energy Trading, Inc	EL03–190–000
Las Vegas Cogeneration, L.P	EL03–191–000
MIECO	EL03–192–000
Modesto Irrigation District	EL03–193–000
Montana Power Company	EL03–194–000
Morgan Stanley Capital Group	EL03–195–000
Northern California Power Agency	EL03–196–000
PacifiCorp	EL03–197–000
PECO	EL03–198–000
Powerex Corporation (f/k/a British Columbia Power Exchange Corporation)	EL03–199–000
Public Service Company of New Mexico	EL03–200–000
Sempra Energy Trading Corporation	EL03–201–000
TransAlta Energy Marketing (U.S. Inc. and TransAlta Energy Marketing (California), Inc	EL03–202–000
Valley Electric Association, Inc	EL03–203–000 (Consolidated)

(Issued June 25, 2003)

MASSEY, Commissioner, *dissenting in part:*

Today the Commission takes another step toward addressing the market manipulation that contributed to the extraordinary Western power crisis. I support this show cause order, and applaud the Commission for dealing with these issues. I write separately to express my disagreement with two aspects of the order.

First, I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the single market clearing price paid by all market participants and collected by all sellers. The Federal Power Act requires that all rates and charges be just and reasonable. Where the market has been manipulated so as to affect the market clearing price, that price is not just and reasonable and is therefore unlawful. Simply requiring that bad actors disgorge their individual profits does not make the market whole because all sellers received the unlawful price caused by the manipulation. The narrow remedy of profit disgorgement is not an adequate remedy for the adverse effect of the bad behavior on the market price, and may not be an adequate deterrent to future behavior. The appropriate remedy may be that the manipulating seller makes the market whole.[1] Unfortunately, today's order appears to take this remedy off of the table. I would prefer to wait to see the extent of harm that specific behaviors caused before addressing the remedy issue.

Second, I would not apply the show cause order to non-public utilities that are otherwise not jurisdictional. Today's order uses the same rationale for doing so as was used to extend a refund obligation to non-public utilities in our July 25, 2001 Order.[2] I disagreed with the rationale at that time, and I still do not believe the Commission has this authority.

For these reasons, I dissent in part from today's order.

William L. Massey,
Commissioner.

[FR Doc. 03–16822 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission has accepted the make the market whole remedy as part of a settlement for withholding generation from the California PX market. See 102 FERC ¶ 61,108 (2003).

[2] San Diego Gas & Electric Company *et al.,* 96 FERC ¶ 61,120 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–499–003]

Equitrans, L.P.; Notice of Compliance Filing

June 26, 2003.

Take notice that on June 20, 2003, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective on October 1, 2002:

First Revised Sheet No. 226
First Revised Sheet No. 227
First Revised Sheet No. 228
Second Revised Sheet No. 229
Second Revised Sheet No. 275
Substitute Second Revised Sheet No. 276
Substitute Original Sheet No. 276A
Substitute Original Sheet No. 276B
Substitute Original Sheet No. 276C
Substitute Original Sheet No. 276D
Second Substitute Fourth Revised Sheet No. 308

Equitrans states that the foregoing tariff sheets are being filed to comply with the Commission's Letter Order, issued herein on April 23, 2003.

Equitrans further states that its filing is being served on all parties to these proceedings, on all of Equitrans' existing customers and upon the Pennsylvania Office of Consumer Advocate, Pennsylvania Public Utility Commission and the West Virginia Public Service 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: July 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16751 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–343–006 and RP00–629–002]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Compliance Filing

June 26, 2003.

Take notice that on June 20, 2003, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, the revised tariff sheets listed in Appendices A–1 and A–2, to the filing. An effective date of June 1, 2003 is requested for the tariff sheets listed in Appendix A–1, and an effective date of June 1, 2003 for the tariff sheets in Appendix A–2.

KMIGT states that it is filing the above-referenced tariff sheets in compliance with the Commission's Order No. 637 and with the Commission's ''Order on Rehearing and Compliance Filing'' dated May 22, 2003 in Docket No. RP00–343.

KMIGT states that a copy of this filing has been served upon all parties on the official service list for 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: July 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16749 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–327–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

June 27, 2003.

Take notice that on June 20, 2003, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama, filed a request pursuant to Sections 157.205, 157.208(b)(2) and 157.211(a)(2) of the Federal Energy Regulatory Commission*s (Commission) Regulations under the Natural Gas Act (NGA), as amended, and blanket certificate authority granted September 1, 1982, in Docket No. CP82–406–000, 20 FERC ¶ 62,414 for authorization to construct and operate a new delivery point to Tamko Roofing Products, Inc. (Tamko) in Tuscaloosa County, Alabama, all as more fully set forth in the request, which is on file with the Commission, and open for public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

Southern proposes to construct and operate certain measurement and other appurtenant facilities to provide up to 1,800 Mcf/day of transportation service for Tamko, under Southern's Rate Schedule IT. Service to the Tamko Plant will be provided at a new delivery point to be located at approximately Mile Post 20.625 on Southern's 12-inch Montgomery-Columbus Line in Tuscaloosa County, Alabama. Southern and Tamko have complied with all of the requirements under Section 36 of the General Terms and Conditions of Southern's FERC Gas Tariff, 7th Revised Volume No. 1 for the installation of the direct delivery connection by Southern. Tamko will reimburse Southern for the estimated $235,100 cost of constructing and installing the proposed facilities pursuant to an executed Construction and Reimbursement Agreement dated May 30, 2003.

Southern states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries. Any questions regarding this filing should be directed to John Griffin, Senior Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563 or call 205–325–7133.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16852 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunflower Electric Power Corporation, Xcel Energy Inc.; Notice of Alternative Dispute Resolution Meeting

June 26, 2003.

The Commission's Dispute Resolution Service has been asked to mediate an informal Alternative Dispute Resolution (ADR) meeting on Monday, July 14 and Tuesday, July 15, 2003, to discuss Sunflower Electric Power Corporation's (Sunflower) proposal to Xcel Energy Inc. (Xcel) to relocate a High Voltage Direct Current converter station in connection with Xcel's construction of a DC tie line. Current plans call for construction of the converter station at Lamar, Colorado, but both Sunflower and Xcel recently have been discussing and negotiating the possibility of locating the converter station near Holcomb, Kansas. Sunflower and Xcel have agreed to participate in the meeting. The purpose of this notice is to invite others who have a significant interest in this matter to also attend.

The meeting will begin at 10:00 a.m. on Monday, July 14, and will be held in the law offices of Ballard, Spahr, Andrews & Ingersoll, LLP, at Suite 2300, 1225 17th Street, Denver, Colorado, 80202 . Please plan for the meeting to flow over, as necessary, into Tuesday, July 15, 2003.

Steven A. Rothman, a mediator with the Commission's Dispute Resolution Service, will chair the meeting. He will be joined by Darrell Blakeway, a member of the Commission's Office of Markets and Investigations staff, as a co-mediator. Mr. Rothman and Mr. Blakeway are available to communicate in private with any interested person prior to the meeting. Questions about the meeting may be referred to Mr. Rothman at (202) 502–8643—*Steven.Rothman@ferc.gov.*, or Mr. Blakeway at (202) 502–8437—*Darrell.Blakeway@ferc.gov*. Please let Mr. Rothman or Mr. Blakeway know by Thursday, July 10, 2003, if you plan to attend the meeting.

Parties may also communicate with Richard Miles, the Director of the Commission's Dispute Resolution Service at 1 877 FERC ADR (337–2237) or (202) 502–8702. Mr. Miles is also available at *Richard.Miles@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16746 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–321–000]

Tennessee Gas Pipeline Corporation; Notice of Request Under Blanket Authorization

June 26, 2003.

Take notice that on June 17, 2003, Tennessee Gas Pipeline Corporation (Tennessee), 9 East Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP03–321–000 a request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations (18 CFR sections 157.205 and 157.208) under the Natural Gas Act (NGA) for authorization to uprate its West Calaboose and Calaboose-Portilla laterals located in San Patricio County, Texas, through an increase in maximum allowable operating pressure (MAOP), under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Tennessee proposes to increase the MAOP of its West Calaboose lateral (Line 4A–100) from 704 to 750 psig and of its Calaboose-Portilla (Line 4A–200) lateral from 721 to 750 psig to facilitate receipts of natural gas. Tennessee states that Lines 4A–100 and 4A–200 are supply laterals connected to Tennessee's parallel mainlines designated as Line No. 100–1 and 100–2. Tennessee further states that the MAOP of its mainline is 750 psig, but whenever the pressure on the mainline exceeds 700 psig, producers on the laterals must be shut in to avoid pressure buildup that exceeds the 704 psig MAOP limits on the two laterals. Tennessee states that it proposes these uprates so that it can consistently and reliably receive natural gas from the affected producers located on these lateral lines. Tennessee states that the estimated cost of the project will be approximately $167,840.

Tennessee states that: (1) The proposed increases in MAOP for the two laterals do not require the construction of any new pipeline facilities and will involve minimal ground disturbance; (2) the uprate testing will be performed using nitrogen gas, and therefore, Tennessee expects no adverse environmental impact; (3) the testing will be performed in accordance with Department of Transportation standards contained in part 192 of Title 49; and (4) all work will be performed within Tennessee's existing rights-of-way. All affected landowners will be notified of the proposed procedure by first class mail in accordance with Section 157.203(d) of the Commission's Regulations (18 CFR 157.203).

Any questions concerning this request may be directed to Jacques Hodges, Attorney, Tennessee Gas Pipeline Company, 9 East Greenway Plaza, Houston, Texas 77046, at (832) 676–5509 or fax (832) 676–2251 or Veronica Hill, Certificates & Regulatory Compliance, Tennessee Gas Pipeline Company, 9 East Greenway Plaza, Houston, Texas 77046, at (832) 676–3295 or fax (832) 676–2231.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16744 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–205–000]

Watts United Power, Complainant, v. Idaho Power Company, Inc., Respondent; Notice of Complaint

June 27, 2003.

Take notice that on June 26, 2003, Watts United Power (Watts) tendered for filing with the Federal Energy Regulatory Commission (Commission) a complaint against Idaho Power Company, Inc. (Idaho Power) pursuant to the Commission's Rule 218 (18 CFR 385.218).

Watts alleges that Idaho Power violated the terms of its Open Access Transmission Tariff (OATT) by overcharging for interconnection services and charging for interconnection related services that are not provided for in its tariffs. In addition, Watts alleges that Idaho Power violated its tariff by engaging in discriminatory treatment in an attempt to prevent Watts from actively competing against Idaho Power in the wholesale electric markets.

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: July 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16853 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–895–000 and ER03–895–001]

White Pine Copper Refinery, Inc.; Notice of Issuance of Order

June 27, 2003.

White Pine Copper Refinery, Inc. (White Pine) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of electric power and energy at market-based rates. White Pine also requested waiver of various Commission regulations. In particular, White Pine requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by White Pine.

On June 25, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by White Pine should file a motion to intervene or protest 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).

®MDBO Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 28, 2003.

Absent a request to be heard in opposition by the deadline above, White Pine is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of White Pine, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of White Pine's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16855 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–381–010]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

June 26, 2003.

Take notice that on June 20, 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 July 21, 2003:

First Revised Sheet No. 4D
Second Revised Sheet No. 4E
Third Revised Sheet No. 57K

WIC states that these tariff sheets remove rates for parties contesting the rate case settlement that are no longer applicable.

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 Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16752 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–90–001]

AES Ocean Express Pipeline Project; Notice of Availability of the Draft Environmental Impact Statement and Announcement of a Public Comment Meeting for the Proposed Ocean Express Pipeline Project

June 27, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Draft Environmental Impact Statement (DEIS) on the natural gas pipeline facilities proposed by AES Ocean Express, L.L.C. (Ocean Express) in the above-referenced docket.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project with the appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DEIS also evaluates alternatives to the proposal, including system alternatives, major route alternatives, and route variations, and requests comments on them.

The DEIS addresses the potential environmental effects of the construction and operation of approximately 54.4 miles of 24-inch diameter, interstate natural gas pipeline extending from a receipt point on the Exclusive Economic Zone boundary between the United States and the Bahamas to delivery points in Broward County, Florida. In addition, associated ancillary facilities proposed to be constructed include two meter stations, one below-ground valve, one aboveground main pipeline shutoff valve, and one pig launching/receiving station.

The purpose of the Ocean Express Pipeline Project is to transport 842,000 dekatherms/day of natural gas on an annual basis to new markets in southeastern Florida.

Comment Procedures and Public Meeting

Any person wishing to comment on the DEIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to:

Magalie Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of the comments for the attention of Gas Branch 3, PJ11.3;
- Reference Docket No. CP02–90–001; and
- Mail your comments so that they will be received in Washington, DC on or before August 12, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

In addition to accepting written and electronically filed comments, one public meeting to receive comments on this DEIS will be held at the following time and location.

Date

Monday, July 28, 2003, 7 p.m.—

Location

Hollywood Beach Culture & Community Center, 1301 S. Ocean Drive, Hollywood, Florida 33019, (954) 921–3600

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts described in the DEIS. Transcripts of the meetings will be prepared.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a Final Environmental Impact Statement (FEIS) will be published and distributed by the staff. The FEIS will contain the staff's responses to timely comments filed on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this DEIS. You must file your request to intervene as specified above. You do not need intervenor status to have your comments considered.

The DEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the DEIS have been mailed to Federal, state and local agencies, public interest groups, individuals who have requested the DEIS, newspapers, and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16851 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3516–008]

City of Hart, MI; Notice of Availability

June 27, 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 47879), the Office of Energy Projects has reviewed the application for license for the Hart Hydroelectric Project, located on the South Branch of the Pentwater River, in Oceana County, Michigan, and has prepared a Final Environmental Assessment (FEA) for the project. There are no federal lands occupied by the project works or located within the project boundaries.

The FEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

For further information, contact Steve Kartalia at 202–502–6131 or by E-mail at *stephen.kartalia@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16856 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–5–003 and CP03–305–000]

Algonquin Gas Transmission Company, Distrigas of Massachusetts LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Everett Extension Project, and Request for Comments on Environmental Issues for the Distrigas of Massachusetts LLC Application

June 26, 2003.

A Notice of Intent to prepare and environmental assessment was sent out on March 19, 2003 for the proposed Algonquin Gas Transmission Company (Algonquin) application for authorization to construct and operate the Everett Extension Project in Suffolk County, Massachusetts. The purpose of this notice is to inform the public that based on the comments and information received during the scoping process a decision was made to prepare an environmental impact statement (EIS) on the Everett Extension Project instead of an environmental assessment. In addition, we [1] are requesting comments on additional facilities proposed by Distrigas of Massachusetts LLC (DOMAC).

On May 22, 2003 DOMAC filed an application for a Certification of Public Convenience and Necessity to construct facilities in Suffolk County, Massachusetts to deliver regasified liquefied natural gas (LNG) to customers through the Everett Extension Project. We will review both projects in the same EIS. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The applications, and other supplemental filings in these dockets are available for viewing on the FERC Internet Web site *(http://www.ferc.gov)*. Click on the ''FERRIS'' link, select ''General Search'' from the FERRIS menu, and follow the instructions, being sure to input the correct docket numbers [CP01–5–003 (Algonquin) and CP03–305–000 (DOMAC)].

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain and under certain circumstances the pipeline company could initiate condemnation proceedings in accordance with Massachusetts law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice that Algonquin provided to landowners.

This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Projects

Algonquin would construct 6.64 miles of 24-inch-diameter pipeline, 0.31 miles of 8-inch-diameter pipeline, three meter stations, and appurtenant facilities. The proposal would extend the 24-inch-diameter Deer Island Lateral pipeline (approved on June 4, 2002, in Docket No. CP01–5–002, but unbuilt yet). The proposal would provide 110,000 dekatherms per day of firm transportation service.

Algonquin requests final authorization for the proposed facilities by December 15, 2003, and would construct its facilities in 2004 during the summer and fall, so that it could place the facilities in service by June 1, 2005.

DOMAC would construct a new 300-foot-long send-out line, odorant system, metering system, and reconfigure its existing vaporization equipment. The proposed facilities would be constructed within the existing boundaries of the LNG terminal. DOMAC requests that the Commission issue a final certificate by December 1, 2003, in order to provide DOMAC with an in-service date for the project in time to meet its contractual commitments to Algonquin.

The general locations of the project facilities are shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the Everett Extension Project would temporarily disturb a total of about 72.7 acres of land. This includes about 22.9 acres offshore and 36.2 acres onshore for the pipeline construction right-of-way (ROW), and 13.6 acres for extra workspace and contractor staging areas. The total land requirements for the permanent ROW would be about 14.1 acres, including 1.4 acres of land for operation of the new aboveground facilities. The remaining 58.6 acres of land affected by construction would be restored and allowed to revert to its former use.

Approximately 3.9 miles of the pipeline would be built onshore, and 3.1 miles would be offshore. The offshore construction would include about 2.3 miles of horizontal directional drilling, and about 0.8 miles of shallow water dredging. The offshore disturbance would include about 8.7 acres for trench excavation and 14.2 acres for temporarily storing the side-cast trench spoil. Algonquin states that most (69 percent) of the proposed onshore route would not require

[1] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''FERRIS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Algonquin to obtain a ROW easement, since 60 percent of the route would be located within existing roads or utility ROW, and 9 percent would be on property owned by proposed customers. Algonquin would typically use a 50-to 75-foot-wide construction ROW. Temporary extra workspaces are often needed for waterbody, highway, and railroad crossings; additional topsoil storage; and pipe storage and equipment yards.

DOMAC facilities would be constructed entirely within the existing boundaries of the LNG Plant.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This is called ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. We have already received comments on the scope of the analysis of the Everett Extension Project. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS related to the DOMAC proposed application. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

—water resources
—wetlands
—fisheries and essential fish habitat
—vegetation and wildlife
—endangered and threatened species
—land use, recreation, and visual resources
—cultural resources
—socioeconomics
—geologic and soil resources
—air and noise quality
—reliability and safety
—system or route alternatives
—cumulative impacts

Our independent analysis of the issues will be in the EIS. The

EIS will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the EIS. We will consider all comments on the EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our responses to comments received and will be used by the Commission in its decision-making process to determine whether to approve the project.

To ensure your comments are considered, please carefully follow the instructions in the Public Participation section of this notice.

Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified a number of issues that deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by Algonquin, and early input from intervenors.

Some of these issues are listed below. This list is preliminary and may be changed based on your comments and our analysis.

—Effect of construction on groundwater or surface water supplies;
—Potential failure of the horizontal directional drill segments, or inadvertent releases of drilling lubricant or hazardous materials during the drilling activities;
—Extent and effects of turbidity and sedimentation that may result from pipeline trenching or directional drilling in shallow waters;
—Potential fuel spills from the pipelay barges and associated vessel traffic;
—Construction and operational effects on marine and estuarine habitats that support commercial or recreational fisheries;
—Potential effects to wildlife and fisheries, including essential fish habitat and other fishery resource of concern, and other biological resources of concern;
—Potential effects on federally endangered and threatened species including the piping plover, northern right whale, humpback whale, fin whale, loggerhead sea turtle, green sea turtle, hawksbill sea turtle, Kemp's ridley sea turtle, and leatherback sea turtle;
—Potential effects to onshore and offshore submerged cultural resources;
—Noise generated as a result of pipeline construction;
—Temporary disruption of local roadways and recreational trails during construction;
—Potential effect of the project on Logan Airport operations;
—Cumulative impacts and temporal loss of habitat function from additive effects of the proposed project with other projects, including natural gas pipelines and other utilities, which have been recently constructed or are proposed to be built in the same region;
—Public safety in the vicinity of the proposed facilities.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

—Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
—Label one copy of the comments for the attention of the Gas Branch 2.
—Reference Docket Nos. CP01–5–003 and CP03–305–000.
—Mail your comments so that they will be received in Washington, DC on or before July 28, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

If you do not want to send comments at this time but still want to remain on

our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 2) [3]. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential ROW grantors.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC, or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnLineSupport@ferc,gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16743 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Offer of Settlement, Application for Surrender of License, and Soliciting Comments, Motions To Intervene, and Protests

June 26, 2003.

Take notice that the following offer of settlement and application for surrender of license has been filed with the Commission and is available for public inspection:

a. *Application Type:* Offer of Settlement and Surrender of License [1].

b. *Project No.:* P–2659–011 and –016.

c. *Date Filed:* June 16, 2003.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Powerdale Hydroelectric Project.

f. *Location:* On the Hood River, near the town of Hood River, in Hood River County, Oregon. The project boundary does not occupy any federal lands of the United States.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 and Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David Leonhardt, Project Manager, PacifiCorp 825 NE Multnomah, Suite 1500, Portland, Oregon, 97232 (503) 813–6658.

i. *FERC Contact:* Bob Easton (202) 502–6045, e-mail at robert.easton@ferc.gov.

j. *Cooperating agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing documents described in item k below.

k. *Deadlines:* Comments, motions to intervene, and protests are due 30 days from the issuance date of this notice. Reply comments are due 40 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, protests, and requests for cooperating agency status 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's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. PacifiCorp filed an offer of settlement and an application to surrender its major license for the Powerdale Hydroelectric Project. PacifiCorp filed the settlement on behalf of itself and the American Rivers, Confederated Tribes of the Warm Springs Reservation of Oregon, Hood River Watershed Group, National Marine Fisheries Service, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Water Resources Department, and United States Fish and Wildlife Service. Under the terms of the settlement and as proposed in the surrender application, PacifiCorp would continue operation of the project through April 2010, at which time they would begin decommissioning the project, with completion by February 2012. Operations during the interim period (*i.e.*, prior to decommissioning) would include: (1) Implementing ramping rates; (2) maintaining increased minimum flows; (3) monitoring stream temperatures; (4) reducing diversions to approximately 25 cubic feet per second from April 15 to June 30 each year; (5) restricting the times when the sand settling basin would be flushed; and, (6) various other reporting, maintenance, or facility upgrade commitments. Decommissioning the project would involve: (1) removal of the diversion dam and associated structures; (2) removal of sections of the water conveyance system; (3) removal of the fish ladder and the sorting and collection facility; and, (4) securing the project powerhouse which would be left in place.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''FERRIS'' link—

[1] *See* PacifiCorp, 97 FERC ¶ 61,348 (2001).

select ''Docket #'' and follow the instructions. 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. To facilitate the subject surrender, the Commission will incorporate into the record for this proceeding, all documents filed with or issued by the Commission as part of the relicensing proceeding (P–2659–011).

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. 03–16747 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 26, 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.:* 2720–036.

c. *Date filed*: July 29, 2002.

d. *Applicant:* City of Norway, Michigan.

e. *Name of Project:* Sturgeon Falls Hydroelectric Project.

f. *Location:* On the Menominee River in Dickinson County, Michigan and Marinette County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r)

h. *Applicant Contact:* Ray Anderson, City Manager, City of Norway, City Hall, 915 Main Street, Norway, Michigan 49870, (906) 563–8015.

i. *FERC Contact:* Patti Leppert (202) 502–6034, or *patricia.leppert@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) A 270-foot-long concrete dam with spillway equipped with a 16.7-foot-high by 24-foot-wide Taintor gate and a 16.7-foot-high by 16-foot-wide Taintor gate; (2) a 126.5-foot-long concrete head-works structure; (3) a 400-acre impoundment with a normal pool elevation of 829.8 feet National Geodetic Vertical Datum; (4) a 300-foot-long, 60-foot-wide power canal; (5) a powerhouse containing four generating units with a total installed capacity of 5,136 kilowatts; (6) a 300-foot-long, 7.2-kV transmission line; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each

representative of the applicant specified in the particular application.

o. *Procedural schedule and final amendments*: The application should be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments.	Jul. 2003.
Request Additional Information, if necessary.	Aug. 2003.
Issue Scoping Document 2, if necessary.	Aug. 2003.
Notice Ready for Environmental Analysis.	Sept. 2003.
Notice of the availability of the EA.	Jan. 2004.
Ready for Commission's decision on the application.	Mar. 2004.

p. You may also 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.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16748 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–694–000 and ER03–694–001]

PJM Interconnection, L.L.C.; Notice of Staff Technical Conference

June 27, 2003.

On June 17, 2003, the Commission issued an Order Accepting and Suspending Tariff Sheets Subject to Refund and Establishing a Technical Conference regarding a filing made by PJM Interconnection, L.L.C. (PJM) proposing to establishing a charge for excessive bid/offer segments in its energy markets and Financial Transmission Rights (FTR) auctions. *See* PJM Interconnection, L.L.C., 103 FERC 2061,333 (2003).

Take notice that a staff technical conference on the matters set forth in the Commission's order will be held for one day, on Wednesday July 16, 2003, from 10 a.m. to 5 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. PJM and persons protesting various aspects of PJM's filing should be prepared to answer questions and deliver presentations.

All interested persons are permitted to attend. To assist Staff, attendees are requested to e-mail *valerie.martin@ferc.gov*. stating your name, the name of the entity you represent, the names of the persons who will be accompanying you, and a telephone number where you can be reached.

Among the issues the Staff is interested in exploring are:

A. How does bidding to take advantage of small arbitrage opportunities affect the markets operated by PJM? What other benefits and/or disadvantages might such behavior cause customers? For example, how has this type of financial trading affected price differences between PJM's day-ahead and real-time energy markets?

B. How should the cost of PJM's proposed information system upgrades be recovered? If this type of financial trading activity benefits the energy markets, then is it appropriate to recover costs from all customers or through a separate charge for excessive bids? For example, has bidding to take advantage of small arbitrage opportunities assured more efficient pricing of transactions?

C. Would PJM's proposed information system upgrades be installed solely as a result of system expansion?

D. What were the monthly average number of bids/offers submitted in PJM's monthly FTR auctions from 2001 to the present? What were the average number of bids/offers submitted in the second, third and fourth rounds of the 2003 Annual FTR auction?

The above schedule may be changed as circumstances warrant.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16854 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–10–000]

Western Energy Infrastructure Conference; Notice of Technical Conference and Agenda

June 27, 2003.

As announced in the Notice of Conference issued on June 2, 2003, the Federal Energy Regulatory Commission (FERC) will hold a conference on July 30, 2003 to discuss issues regarding energy infrastructure in the western states. These states include Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico. This half-day conference will begin at 2 p.m. and conclude at approximately 6 p.m., and will be held at the Marriott Denver City Center, 1701 California Street, Denver, Colorado (1–800–228–9290). All interested persons are invited to attend.

The conference will focus on the adequacy of the electric, gas and hydropower energy infrastructure in the West. The FERC Commissioners will attend, and the Governors, legislators, state utility commissioners, tribal delegates of the western states, as well as international representatives from Canada and Mexico, have been invited to participate. The goal is to identify the current state of infrastructure in the West, present and future infrastructure needs, and the means for and barriers to fulfilling those needs. We look forward to an informative discussion of the issues to clarify how we can facilitate and enhance a comprehensive, collaborative approach to energy infrastructure development and reliability for the western states. It is becoming increasingly clear that a well-functioning energy infrastructure is necessary to meet America's energy demands.

The conference Agenda is appended to this Notice. As indicated, the purpose of the conference is to discuss regional infrastructure issues among the panelists, and federal and state officials. It is not intended to deal with issues pending in individually docketed cases before the Commission, such as applications involving hydropower, natural gas certificates, or the formation of Regional Transmission Organizations. Therefore, all participants are requested to address the agenda topics and avoid discussing the merits of individual proceedings.

Opportunities for Listening to and Obtaining Transcripts of the Conference

The Capital Connection will offer this meeting live via telephone and audio on the internet for a fee. There will not be live video coverage or videotapes of the conference. For more information about Capitol Connection's services, contact David Reininger or Julia Morelli (703–993–3100), or go to *http://www.capitolconnection.org*.

Audio tapes of the meeting will be available from VISCOM (703–715–7999).

Additionally, transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646), for a fee. They will be available for the public on the Commission's FERRIS system two weeks after the conference.

A reminder to please register for the conference online on the Commission Web site at *http://www.ferc.gov/home/conferences.asp*. Scroll down and click on ''Western Energy Infrastructure Conference in Denver, CO''. There is no registration fee.

Questions about the conference program should be directed to: Carol Connors, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *carol.connors@ferc.gov*.

Magalie R. Salas,

Secretary.

Attachment: Conference Agenda

Marriott Denver City Center, 1701 California Street, Denver, Colorado,

July 30, 2003.

I. Opening Remarks and Introductions—2 p.m. to 2:10 p.m.

Chairman Pat Wood, Commissioner William Massey, Commissioner Nora Brownell.

II. Overview of Current Energy Infrastructure—2:10 p.m. to 2:20 p.m.

Jeff Wright, Office of Energy Projects, FERC.

III. Forecasting Future Energy Infrastructure Needs—2:20 p.m. to 2:40 p.m.

Todd Filsinger, Senior Partner, Wholesale Energy Markets, PA Consulting Group.

IV. New Electric Generation—2:45 p.m. to 3:30 p.m.

Can new electric generation meet Western demand?

- Economic and financial barriers to new generation—Rebecca Followill, Gas and Power Group, Howard Weil Investment Counselors
- Fueling new generation—Peter Moritzburke, Director, Western Energy Office, Cambridge Energy Research Associates
- Retirement forecast/reserve margin—Jeremy Platt, Manager, Power & Fuel Markets, Electric Power Research Institute (EPRI), one author of a recently released EPRI report, ''Outlook for Capacity Retirements Following U.S. Boom in New Supplies: Report Series on Natural Gas and Power Reliability, February 2003''
- Demand response successes—Charles Goldman, Leader, Electricity Markets and Policy Group, Lawrence Berkeley National Laboratory

V. Natural Gas—3:35 p.m. to 4:20 p.m.

Can natural gas meet future energy needs in the West?

- Traditional natural gas supply availability—Roger Biemans, President, EnCana US
- Rocky Mountains infrastructure needs/Coal-bed methane developing technology—Brian Jeffries, Vice President, Marketing, Western Gas Resources
- Role of Liquified Natural Gas (LNG) facilities in gas supply—Darcel Hulse, President, Sempra Global
- Canadian gas update—Bill Bingham, Acting Business Leader, Commodity Unit, National Energy Board-Canada/NEB
- Mexican gas update—Francisco de la Isla, General Director, Economic Policy Unit, Comision Reguladora de Energia/CRE

VI. Electric Transmission—4:25 p.m. to 5:10 p.m.

Can the electric transmission system get generation to load centers?

- Siting issues in the West, *e.g.*, federal land corridors—Ronald Montagna, Senior Realty Specialist, Bureau of Land Management /White House Energy Task Force
- Major transmission constraints—Armando Perez, Director of Grid Planning, California Independent System Operator
- Bonneville Power Administration's role and future plans—Vickie VanZandt, Vice President of Operation and Planning, Bonneville Power Administration
- State of regional transmission planning—Dean Perry, Chairman of the Planning Work Group, Seams Steering Group-Western Interconnection/SSG–WI
- Industry participation in new transmission infrastructure—Frederic Stoffel, Vice President, Policy Development, XCEL Energy

VII. Discussion by State, Federal, Tribal and International Officials—5:15 p.m. to 6 p.m.

What conclusions have been reached and what are the next steps?

- Public Utility Commissioners—Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico (invited)
- Tribal Representatives—A. David Lester, Executive Director, Council of Energy Resource Tribes (CERT), and Roger B. Fragua, Deputy Director, CERT
- Elected Officials or their Senior Designees—Governors, Congressional and/or State legislators (invited)
- Francisco de la Isla, General Director, Economic Policy Unit, CRE–Mexico, and Bill Bingham, Acting Business Leader, Commodity Unit, NEB–Canada
- Closing Remarks

[FR Doc. 03–16850 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

June 27, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped

by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	Date filed	Presenter or Requester
1. CP02–90–000.	6–24–03	James Martin.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16857 Filed 7–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6641–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements filed June 23, 2003 through June 27, 2003 pursuant to 40 CFR 1506.9.

EIS No. 030295, Draft EIS, AFS, OR, Flagtail Fire Recovery Project, To Address the Differences between Existing and Desired Conditions, Blue Mountain Ranger District, Malheur National Forest, Grant County, OR, Comment Period Ends: August 18, 2003, Contact: Linda Batten (541) 575–3000. This document is available on the Internet at:*http://www.fs.fed.us/r6/malheur.*

EIS No. 030296, Final Supplement, UAF, CA, NM, Airborne Laser (ABL) Program, Conducting Test Activities at Kirtland Air Force Base (AFB) and White Sands Missile Range/Holloman AFB, New Mexico; and Edwards AFB and Vandenberg AFB, California, NM and CA, Wait Period Ends: August 4, 2003, Contact: Charles Brown (210) 536–4203. This document is available on the Internet at: *http://www.afcee.brooks.af.mil/ec/ecproducts.asp.*

EIS No. 030297, FINAL EIS, AFS, MT, Garver Project, Harvest and Old Growth Regeneration, Implementation, Kootenai National Forest, Three Rivers Ranger District, Lincoln County, MT, Wait Period Ends: August 4, 2003, Contact: Kathy Mohar (406) 295–4693.

EIS No. 030298, Draft EIS, NRC, ID, Idaho Spent Fuel Facility, Construction, Operation and Decommission, License Application, Idaho National Engineering and Environmental Laboratory, Butte County, ID, Comment Period Ends: August 18, 2003, Contact: Matthew Blevins (301) 415–7684. This document is available on the Internet at: *http://www.nrc.gov/reading-rm.html.*

EIS No. 030299, Draft EIS, NRC, NY, Generic—License Renewal for R.E. Ginna Nuclear Power Plant, Supplement 14, NUREG–1437, Implementation, Wayne County, NY, Comment Period Ends: September 16, 2003, Contact: Robert G. Schaaf (301) 415–1312. This document is available on the Internet at: http://www.fs.fed.us/r4/Payette/main.html.

EIS No. 030300, Final EIS, FHW, FL, St. Augustine Bridge of Lions (SR AIA) Rehabilitation or Replacement of the existing two lane bridge Crossing over the Matanzas River, Intracoastal Waterway, U.S. Coast Guard Bridge Permit and NPDES Permit Issuance, St. Augustine, St. John County, FL, Wait Period Ends: August 6, 2003, Contact: Donald E. Davis (850) 942–9650.

EIS No. 030301, Final EIS, UAF, CA, Los Angeles Air Force Base Land Conveyance, Construction and Development Project, Transfer Portions of Private Development in Exchange for Construction of New Seismically Stable Facilities, Cities of EL Sequndo and Hawthorne, Los Angeles County, CA, Wait Period Ends: August 18, 2003, Contact: Jason Taylor (310) 363–0142.

EIS No. 030302, Draft EIS, FRC, FL, Ocean Express Pipeline Project, Construction, Operation and Maintenance of a Interstate Natural Gas Pipeline extending from the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas, (Docket No. CP02–090–001–1) Plan of Operations Approval, NPDES and U.S. Army COE Section 10 and Possible 404 Permits, Broward County, FL, Comment Period Ends: August 25, 2003, Contact: Tom Russo (202) 502–8004. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 030303, Draft EIS, TVA, TN, KY, MS, VA, AL, GA, NC, Programmatic EIS—Tennessee Valley Authority Reservoir Operations Study, Implementation, TN, AL, KY, GA, MS, NC and VA, Comment Period Ends: September 4, 2003, Contact: Linda Shipp (865) 632–3440.

Amended Notices

EIS No. 030150, Draft EIS, AFS, WI, Programmatic EIS—Cheguamegon-Nicolet National Forests Revised Land and Resource Management Plan, Implementation, Ashland, Bayfield, Florence, Forest, Langlade, Oconto, Oneida, Price, Sawyer, Taylor and Vilas Counties, CA, Comment Period Ends: August 11, 2003, Contact: Sally Hess-Samulson (715) 362–1384. Revision of FR Notice Published on 4/11/2003: CEQ Comment Period Ending 7/11/2003 has been Extended to 8/11/2003.

Dated: June 30, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–16847 Filed 7–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6641–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–K65254–AZ Rating LO, Cross-County Travel by Off-Highway Vehicle Project, Motorized Wheeled Cross-Country Travel Restrictions, Apache-Sitegreaves, Conino, Kaibab, Prescott and Tonto National Forests, AZ.

Summary: EPA had no significant concerns with the preferred alternative.

ERP No. D–AFS–K65255–CA Rating LO, Spalding Land Exchange Project, Proposed Land Exchange between Spalding Community Service District (SCSD) and Lassen National Forest (LNF), Special Use Permit, Lassen County, CA.

Summary: EPA has no significant concerns with the preferred alternative.

ERP No. D–BLM–K65250–NV Rating LO, Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area (NCA) and Associated Wilderness and Other Contiguous Lands Resource Management Plan, Implementation, Great Basin, NV.

Summary: EPA had no significant concerns with the preferred alternative.

ERP No. D–FHW–G40173–LA Rating LO, I–49 South Lafayette Regional Airport to LA–88 Route U.S. 90 Project, Upgrading Existing U.S. 90 from the Lafayette Regional Airport to LA–88, Funding, Iberia, Lafayette and St. Martin Parishes, LA.

Summary: EPA has no objection to the selection of the preferred alternative.

ERP No. D–FHW–H40179–MO Rating LO, Missouri River Corridor Widening and Improvements, New Four Lane Expressway, Corridor consist of Four Segments: Front Street, Chouteau Trafficway, South Riverfront Expressway (SRE) and Little Blue Expressway (LBE), Funding, Jackson and Clay Counties, MO.

Summary: EPA has no objections to the proposed project. However, EPA recommends that a chronological evaluation of other planned actions relative to the proposed implementation schedule of the Missouri River Corridor be utilized to derive the preferred alternative.

ERP No. D–NPS–C61055–NJ Rating LO, Morristown National Historical Park General Management Plan, Implementation, Morris and Somerset Counties, NJ.

Summary: EPA has no objections with the management plan and requests the opportunity to review future NEPA documents prepared for specific actions outlined in the programmatic plan.

ERP No. DA–FHW–B40037–RI Rating EC2, Jamestown Bridge Replacement Project, New Information Regarding the Demolition of the Old Jamestown Bridge (Bridge No. 400), Federal Aid Project Number (BRF–0138(002), U.S. Coast Guard Bridge, NPDES and U.S. Army COE Section 404 Permits Issuance, Towns of North Kingstown and Jamestown, Washington and Newport Counties, RI.

Summary: EPA expressed environmental concerns and requested additional information to more fully describe flora and fauna to the project area and the existing conditions at candidate reef sites; to document the impacts associated with both the demolition and disposal phases of the project; and to address air quality issues associated with the work.

ERP No. DS–FTA–C40150–NY Rating EC2, Second Avenue Subway Project, Transit Access Improvements to Manhattan's East Side and Excess Crowd Reduction on the Lexington Avenue Subway, Funding, New York, NY.

Summary: EPA has environmental concerns with the proposed project's air quality impacts, particularly carbon monoxide (CO) and particulate matter, as well as wetland impacts.

Final EISs

ERP No. F–AFS–F65032–MN Holmes/Chipmunk Timber Sale Project, Implementation, Superior National Forest, LaCroix Ranger District, Saint Louis County, MN.

Summary: EPA determined that previous environmental concerns have been addressed in this Final EIS.

ERP No. F–AFS–K65245–AZ Kachina Village Forest Health Project, Forest Health Improvements and Potential Wildfire Reductions on National Forest System Land, Implementation, Coconino National Forest, Mormon Lake Ranger District, Coconino County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K09808–NV Ivanpah Energy Center Project, 500 Megawatt (MW) Gas-Fired Electric Power Generating Station Construction and Operation, Approval, Right-of-Way Grant, BLM Temporary Use Permit, FHWA Permit to Cross Federal Aid Highway, U.S. Army COE Section 10 and 404 Permits and NPDES Permit Issuance, Clark County, NV.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–E40783–SC Dave Lyle Boulevard Extension on New Location, SC–161/Dave Lyle Boulevard Intersection in York County to SC–75, at the US–521/SC–75 Intersection, near the South Carolina/North Carolina Border in Lancaster, Funding, York and Lancaster Counties, SC.

Summary: EPA continues to have environmental concerns with the proposed project regarding impacts and mitigation for endangered species, wetlands, and traffic noise.

ERP No. F–FHW–F40410–IL Milan Beltway Extension, Airport Road to Blackhawk Road/John Deere Expressway, Funding and Permits Issuance, Rock River, Rock Island County, IL.

Summary: EPA has no objections to the preferred alternative, which we believe will have minimal environmental impacts, provided mitigation is implemented, and which meets the stated purpose of addressing area traffic volume.

ERP No. F–FHW–K40247–CA CA–22/West Orange County Connection Project, Transportation Improvements between I–605 and CA–55, Funding, Cities of Los Alamitos, Seal Beach, Garden Grove, Westminster, Santa Ana and Orange, Orange County, CA.

Summary: EPA has no objections to the proposed project. However, EPA asked that FHWA's Record of Decision clarify if the project disturbs or removes polychlorinated biphenyls (PCBs), a toxic substance, at facilities or structures proposed for displacement.

ERP No. F–JUS–K81028–CA Juvenile Justice Facility and East County Hall of Justice Development, Potential Construction of Both Projects on the Same Site or on Separate Sites, Alamenda County, CA.

Summary: EPA expressed a lack of objections to this project.

ERP No. F–NPS–K65239–AZ Tonto National Monument General Management Plan, New Administrative Facility Construction within the Monument Boundaries, Implementation, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–L61199–ID Salmon Wild and Scenic River Management Plan, Timeline Change From December 31, 2002 to December 31, 2005 and Clarification of Economic Impacts on the Camps, Stub Creek, Arctic Creek and Smith Gulch Creek, Salmon National Forest, Salmon County, ID.

Summary: No formal comment letter was sent to the preparing agency.

Dated: June 30, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–16848 Filed 7–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6641–8]

Public Input Requested on the Proposed Site Designation of the ''LA–3'' Ocean Dredged Material Disposal Site off Newport Bay, Orange County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to initiate the scoping phase for public input in advance of preparing an Environmental Impact Statement (EIS) to designate ''LA–3'' as a permanent ocean dredged material disposal site (ODMDS) off Newport Bay, California.

PURPOSE: EPA has the authority to designate ODMDS under Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 (33USC 1401 *et seq.*). EPA's preparation of this EIS is being carried out pursuant to the October 29, 1998 Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) (63 FR 58045). Public comments on the scope of the EIS evaluation will be accepted for 45 days from the date of this notice.

FOR FURTHER INFORMATION, TO SUBMIT COMMENTS, AND TO BE PLACED ON A PROJECT MAILING LIST, CONTACT: Mr. Allan Ota, U.S. Environmental Protection Agency, Region 9, Dredging and Sediment Management Team (WTR–8), 75 Hawthorne Street, San Francisco, California 94105–3901, Telephone: (415) 972–3476 or FAX: (415) 947–3537 or E-mail: *R9_LA3LA2disposal sites_scoping@epa.gov.*

SUMMARY: EPA intends to conduct public meetings and collect public comments in advance of preparing an EIS to designate LA–3 as a permanent ODMDS off Newport Bay, California. The EIS will also re-evaluate an annual disposal volume limit for the existing LA–2 ODMDS, and how to minimize cumulative environmental impacts from two ODMDS in the region.

NEED FOR ACTION: Dredging is essential for maintaining safe navigation in harbors and marinas in the Los Angeles County and Orange County region. Not all dredged materials are suitable for beneficial re-use (*e.g.*, construction, wetlands restoration), and it is not feasible to use the existing LA–2 ODMDS for all projects in the region. The LA–3 ODMDS has been used by some Orange County projects in the past, but its ''interim'' status has expired. Therefore there is a need to designate LA–3 as a permanent ODMDS.

ALTERNATIVES: The following proposed alternatives have been tentatively defined.

—''No Action''—Do not designate LA–3 as a permanent ODMDS, and continue to manage the existing LA–2 ODMDS without a designated maximum annual disposal volume limit.

—''Maximize Use of LA–2''—Do not designate LA–3 as a permanent ODMDS, but establish a maximum annual disposal volume limit for the LA–2 site adequate to meet the ocean disposal needs of all Los Angeles-Orange County region projects.

—''Local Use of LA–3 and LA–2''—Designate LA–3 as a permanent ODMDS primarily for Orange County projects, and establish a higher maximum annual disposal volume limit for LA–2 to accommodate most Los Angeles area projects.

—''Maximize Use of LA–3''—Designate LA–3 as a permanent ODMDS with a maximum annual disposal limit to meet the ocean disposal needs of all Los Angeles-Orange County region projects to the extent feasible, and establish an annual disposal volume limit for LA–2 to accommodate only those projects that could not feasibly use LA–3.

SCOPING: EPA is requesting written comments from federal, state, and local governments, industry, non-governmental organizations, and the general public on the need for action, the range of alternatives considered, and the potential impacts of the alternatives. Scoping comments will be accepted for 45 days, beginning with the date of this Notice. Public scoping meetings are scheduled at two locations on the following dates: 1. July 21, 2003, 2–4 p.m. and 7–9 p.m., in Orange County at the Upper Newport Bay Peter and Mary Muth Interpretive Center, 2301 University Drive, Newport Beach, California 92660 (corner of University Drive and Irvine Avenue). 2. July 22, 2003, 2–4 p.m. and 7–9 p.m., in Los Angeles County at the Port of Long Beach, 925 Harbor Plaza, Long Beach, California 90802, on the 5th Floor Conference Room.

Estimated Date of Draft EIS Release: February 2004.

Dated: June 30, 2003.

Anne Norton Miller,

Director, Office of Federal Activities.

[FR Doc. 03–16846 Filed 7–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0229; FRL–7315–4]

Pyridaben; 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–2003–0229, must be received on or before August 4, 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: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: brothers.shaja@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 manufacturer (NAICS 311)
- Pesticide manufacturer (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–2003–0229. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket

facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa. gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0229. 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–2003–0229. 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–2003–0229.

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–2003–0229. 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 theelements 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: June 26, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner summary of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summary of the petitions were 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.

Interregional Research Project Number 4 (IR-4)

0E6068, 1E6226, 1E6303, 2E6457, and 2E6460

EPA has received pesticide petitions (0E6068, 1E6226, 1E6303, 2E6457, and 2E6460) from IR-4, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 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 180.494 by establishing tolerances for combined residues of pyridaben, 2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one in or on the following raw agricultural commodities: strawberry at 2.5 parts per million (ppm)(PP 0E6068); hop, dried cones at 10.0 ppm (PP 1E6226); tomato at 0.2 ppm (PP 1E6303); fruit, stone, group at 2.5 ppm (PP 2E6457), papaya, black sapote, canistel, mamey sapote, mango, sapodilla, and star apple at 0.1 ppm (PP 2E6460). Registration for tomato will be limited to greenhouse grown tomato based on the available residue data. The petitioner also proposes that established tolerances for nectarine, peach, plum, and prune at 2.5 ppm be deleted since they will be superceded by the tolerance for fruit, stone, group at 2.5 ppm.

EPA has determined that the petitions contain 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 petitions. Additional data may be needed before EPA rules on the petitions. This summary has been prepared by the BASF Corporation.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residue in plants is adequately understood. The residue of concern is pyridaben per se as specified in 40 CFR 180.494.

2. *Analytical method*. The proposed analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography/electron capture detector (gc/ecd).

3. *Magnitude of residues*. Field trials were carried out in order to determine the magnitude of the residue in the following crops: Strawberries, hops, cherries (to satisfy the requirements for a stone fruits group), and papaya. Two greenhouse tomato residue trials were conducted in Canada. Residue trials were carried out using the maximum label rate, the maximum number of applications, and the minimum pre-harvest interval for each crop or crop group.

B. Toxicological Profile

1. *Acute*. In general, the acute toxicology studies conducted on technical grade pyridaben demonstrate that it has moderate to mild toxic effects. It was classified as Toxicity Category III based upon the acute oral lethal dose $(LD)_{50}$ of 1,100 mg/kg in male rats and 570 mg/kg in female rats. The dermal LD_{50} in rabbits was greater than or equal to 2,000 mg/kg (Tox. Cat. III) and the inhalation lethal concentrations $(LC)_{50}$ were 0.66 and 0.64 mg/kg in male and female rats, respectively (Tox Cat. III). The eye irritation study (rabbits) produced slight ocular irritation (Tox. Cat. III). Pyridaben was not a dermal irritant (Tox. Cat. IV) or sensitizer.

2. *Genotoxicity*. Genotoxicity studies including Ames testing, *in vitro* cytogenicity (chinese hamster lung cell), *in vivo* micronucleus assay (mouse) and DNA damage/repair (*E. coli*) showed no genotoxic activity associated with pyridaben.

3. *Reproductive and developmental toxicity*. In a developmental toxicity study, Sprague-Dawley rats (22/group) from Charles River, U.K., received Pyridaben (98.0% pure) via gavage at dose levels of 0, 2.5, 5.7, 13.0, or 30.0 milligram kilogram day (mg/kg/day) from gestation day 6 through 15, inclusive. Maternal toxicity, observed at 13.0 and 30.0 mg/kg/day, consisted of decreased body weight/weight gain and food consumption during the dosing period. Based on these effects, the maternal toxicity lowest observed adverse effect level (LOAEL) is 13.0 mg/

kg/day and the maternal toxicity no observed adverse effect level (NOAEL) is 4.7 mg/kg/day (82% of 5.7 mg/kg/day based on concentration analysis). The developmental toxicity NOAEL is 13.0 mg/kg/day based on observed decreased fetal body weight and increased incomplete ossification in selected bones at 30.0 mg/kg/day LOAEL.

New Zealand white rabbits (19 or 20/group) were orally dosed with 0, 1.5, 5, or 15 mg/kg/day pyridaben from day 6 through 19 of gestation. Maternal toxicity was evidenced by a dose-dependent decrease in body weight gain and food consumption at all dose levels. There was also increased incidences of abortions and clinical signs (few feces) in the 15 mg/kg/day group. There was no evidence that the chemical had a developmental effect at any of the tested levels. The maternal NOAEL was <1.5 mg/kg/day and the Maternal LOAEL was 1.5 mg/kg/day based on decreases in body weight gain and food consumption at all dose levels. No developmental toxicity was observed at any dose level. Therefore, the NOAEL for developmental toxicity is greater than or equal to 15 mg/kg/day.

In a standard two-generation reproduction study, CD rats were administered pyridaben in the diet at doses of 0, 10, 28 or 80 ppm. The Parental/Systemic NOAEL is 28 ppm (2.20 and 2.41 mg/kg/day for males and females, respectively). The parental/systemic LOAEL is 80 ppm (6.31 and 7.82 mg/kg/day for males and females, respectively) based on decreased body weights, body weight gains and food efficiency. There was no effect on reproductive parameters on the dose levels tested. The reproductive NOAEL is ≥80 ppm in males and females. The reproductive LOAEL is >80 ppm in males and females.

4. *Subchronic toxicity*. In a 21–day dermal study, rats received repeated topical applications of pyridaben (98% pure) to about 10% of the body surface area at dosages of 30, 100, 300 and 1,000 mg/kg for 21 days. The treatment produced body weight decreases in the 300 mg/kg/day females and in the 1,000 mg/kg/day males and females. The NOAEL was 100 mg/kg/day and the LOAEL was 300 mg/kg/day based on decreased body weight gain in females. The toxicology endpoints from this study were selected by the Agency for short- and intermediate-term dermal risk assessments.

5. *Chronic toxicity*. In a 12–month chronic feeding study in dogs pyridaben was administered in capsules at dosages of 0, 1.0, 4.0, 16.0 or 32.0 mg/kg/day. All animals survived until the end of the study and there were no treatment-related changes in hematology, clinical chemistry, or urinalysis parameters. The NOAEL was determined to be <1.0 mg/kg/day and the LOAEL was ≤1.0 mg/kg/day based on increased incidences of clinical signs (thinness, dehydration, diarrhea, emesis, soft stool, ptyalism, and relaxed nictitans) in treatment groups of both sexes and decreased body weight gain in females at 1.0 mg/kg/day.

In a follow-up study, Pyridaben was administered in capsules to beagle dogs at dosages of 0 and 0.5 mg/kg/day for 1 year. The NOAEL was determined to be <0.5 mg/kg/day for males and females and the LOAEL was ≤0.5 mg/kg/day for males and females based on an increased incidence of clinical signs in both treated sexes and decreased weight gain in the treated females.

Pyridaben was administered in the diet to CD-1 mice at dosages of 0, 2.5, 8.0, 25 or 80 ppm for 78 weeks. There was no evidence of a carcinogenic effect of the chemical. The NOAEL was determined to be 25 ppm (2.78 mg/kg/day) for males and females and a LOAEL of 80 ppm (8.88 and 9.74 mg/kg/day for males and females, respectively). The LOAEL was determined to be 80 ppm for males and females based on decreased body weight gain, decreased food efficiency and changes in organ weights and histopathology (males).

Pyridaben was administered in the diet to groups of Wistar rats for 104 weeks at doses of 0, 4, 10, 28 or 80 ppm to assess carcinogenicity. Additional groups (35 animals/sex/dose) received doses of 0, 4, 10, 28 or 120 ppm for 104 weeks (with an interim sacrifice at 53 weeks) to assess chronic toxicity. There was no treatment-related neoplastic or non-neoplastic pathology in either phase of the study. The NOAEL was determined to be 28 ppm in males (1.13 mg/kg/day) and 28 ppm (1.46 mg/kg/day) in females. The LOAEL was determined to be 120 ppm (5.00 mg/kg/day) in males and 120 ppm (6.52 mg/kg/day) in females based on decreased body weight gain in males and females and decreased ALT levels in males in the chronic toxicity phase. There was no evidence of a carcinogenic effect of this chemical.

6. *Animal metabolism*. In an acceptable rat metabolism study by the oral route, pyridaben was mainly eliminated in the feces where 80–97% of the administered dose was excreted regardless of the dose or site of label (pyridazinone or benzyl ring). Nearly 20% of the excreted residue in the feces was unmetabolized parent compound and there was some evidence of glucoronide conjugate(s) in the bile. The plasma levels following a single low oral dose (3 mg/kg) peaked at 23 hours while peak levels at the high dose (30 mg/kg) were at approximately 24 hours post-dose due, at least in part, to enterhepatic circulation (nearly 22–30% of an administered radioactive dose is excreted in bile within a period of 24 hours). Residual radioactivity was at or near background levels for most tissues by 72 to 168 hours. Generally, there seemed to be increased distribution to fat over time and, compared to other tissues, fat seemed to have relatively more residual radioactivity. Several metabolites, totaling up to 20–30, were resolved in urine and feces and some were structurally identified.

7. *Metabolite toxicology*. The nature of the residue in animals is adequately understood. The residue of concern is pyridaben and its metabolites PB–7, 2-tert-butyl-5-[4-(1-carboxy-1-methylethyl)benzylthio]-4-chloropyridazin-3(2H)-one and PB–9, 2-tert-butyl-4-chloro-5-[4-(1,1-dimethyl-2-hydroxyethyl) benzylthio]-chloropyridazin-3(2H)-one as specified in 40 CFR 180.494.

8. *Endocrine disruption*. The most common toxicity endpoint across the various studies and test species was decreased body weight/decreased body weight gain followed by decreased feed consumption and/or feed efficiency. These effects were observed in the 13–week feeding study in mice, in a 13–week rat study, in two 13–week dog studies, in a 21–day rat dermal study, in a 28–day inhalation toxicity study in rats, in two 1–year feeding studies in dogs, in a 78–week feeding/carcinogenicity study in mice, in a developmental toxicity study in rats, in two developmental studies in rabbits, and in a 2–year feeding carcinogenicity study in rats. The LOAELs were always based on decreases in body weight gain/body weight decreases or decreases in food consumption. Other effects were sporadic and involved changes in certain clinical chemistry values or increases or decreases in organ weights. Thus, there is no indication that effects on the endocrine system were responsible for any of the observed effects.

C. Aggregate Exposure

1. *Dietary exposure*. Assessments were conducted to evaluate the potential risk due to chronic and acute dietary exposure of the U.S. population to residues of pyridaben (BAS 300 I). Commodities (crops and animal products) specified in 40 CFR 180.494 and all new/updated crop tolerances were included in the dietary assessment (citrus, pome fruit, stone fruit, grapes,

cranberries, tree nuts, pistachio, papaya and similar fruit, strawberries, hops, green house tomatoes, and secondary residues in animal products meat, meat byproducts, fat - from cattle, goat, hog, horse, sheep).

i. *Food*. Specific inputs and default values were considered in the pyridaben dietary assessment. Anticipated residue values from the raw agricultural commodities and the residue tolerances utilized in the assessment were multiplied by a factor of 2.3 to include all organosoluble residues of pyridaben. Tolerance values were assumed for pistachios, tree nuts, and secondary residues in meat, meat byproducts, fat, and milk. The 2.3 multiplication factor was not used for these animal commodities since the residues of concern (pyridaben and its metabolites), as specified in 40 CFR 180.494 are well understood in animals. Default processing factors were used for all commodities except for those specified in Table 1 below. In addition, percent crop treated (% CT) values of 23, 5.8, and 11.4% were utilized for pome fruit, grapes, and citrus, respectively. These percent crop treated values were based on the 2000 to 2002 pyridaben peak sales year and peak acreage year. All other crops were considered to have 100% crop treated.

TABLE 1.—PROCESS FACTORS USED IN THE PYRIDABEN DIETARY ASSESSMENT

Commodity	Process	Process Factor
Citrus	washed juice	0.48 0.096
Apples/Pears	washed juice	0.68 0.09
Grapes	juice dried	0.04 0.94

* Default processing factors were used for all other commodities.

ii. *Drinking water*. There are no established maximum contaminant levels or health advisory levels for residues of pyridaben (BAS 300 I) or its metabolites in drinking water. The PRZM/EXAMS and SciGrow models were used to estimate the maximum concentrations in surface and ground water, respectively. Pyridaben is immobile and thus unlikely to leach to groundwater. Results of environmental modeling indicate an estimated 0.215 ppm (acute) and 0.020 ppm (chronic) of pyridaben in surface water.

2. *Non-dietary exposure*. Pyridaben (BAS 300 I) is a plant protection product used to control insects. This product is not considered for residential use and therefore the aggregate exposure is a result of pyridaben residues in food and water.

D. Cumulative Effects

The cumulative exposure to substances with common mechanism of toxicity must be considered. Currently at this time there is not available data to determine whether pyridaben has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyridaben does not appear to form a toxic metabolite produced by other substances. As a result, for the purposes of this tolerance action, it is assumed that pyridaben does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *Acute*. Exposure estimates for the pyridaben acute dietary assessment were well under 100% of the aPAD at the 99.9th percentile. The overall general population and the most sensitive subpopulation (females 13–49 years) utilized <11% and 14.5% of the acute population adjusted dose (aPAD), respectively. Results from a Tier I dietary assessment of pyridaben residues in cranberries indicates the percent aPAD for children 1–6 years old and females 13–49 years old were <3%. Therefore considering all current and pending commodities, including cranberries, the percent chronic reference dose (%cRfD) and percent chronic population dose (%cPAD) will be below 20% for all population subgroups. Further refinements including additional percent crop treated, processing factors, cooking factors, actual residue values for the remaining commodities (where default values and tolerance levels were used for this assessment) would further reduce the exposure estimates.

TABLE 2. ACUTE DIETARY EXPOSURE ASSESSMENT FOR FOR PYRIDABEN (BAS 300 I)

Population Subgroups	Exposure Estimate (mg/kg b. w. /day)	%aRfD	%aPAD
Birth to 1 year	0.04488	8.98	8.98
1–2 years	0.0509	10.18	10.18
3–5 years	0.04339	8.68	8.68
1–6 years	0.03382	6.76	6.76
6–12 years	0.0300	6.00	6.00
13–19 years	0.01327	2.65	2.65
Females 13–49 years	0.01885	14.50	14.50
Males 20–49 years	0.01101	2.20	2.20
Adults 50+ years	0.01591	3.18	3.18

2. *Chronic*. The estimated chronic dietary exposure for all current and pending commodities (except cranberries) ranged from 15.6 to 77.3% for the cRfD and cPAD for all subpopulations. Results from a Tier I dietary assessment of pyridaben residues in cranberries indicates the percent cPAD for children 1–6 years old and females of childbearing years (13–49 years old) were 7.1% and 12.9%, respectively. Therefore considering all current and pending commodities, including cranberries, the %cRfD and %cPAD will be below 100% for all population subgroups. Further refinements including additional percent crop treated, processing factors, cooking factors, actual residue values for the remaining commodities (that used default values and tolerance levels) would further reduce the exposure estimates.

TABLE 3.—CHRONIC DIETARY EXPOSURE ASSESSMENT FOR PYRIDABEN (BAS 300 I)

Population Subgroups	Exposure Estimate(mg/kg b.w./day)	%cRfD	%Cpad
Birth to 1 year	0.00371	74.2	74.2
12 years	0.003867	77.34	77.34
35 years	0.002752	55.04	55.04
16 years	0.0031	62	62
6–12 years	0.002541	50.82	50.82
13–19 years	0.0009618	19.236	19.236

The aggregate exposure (food and drinking water) of pyridaben will not exceed the U.S. EPA's level of concern (100% of RfD). Overall, we can conclude with reasonable certainty that no harm will occur from either acute or chronic aggregate exposure of pyridaben residues as a result of use on citrus, pome fruit, stone fruit, grapes, cranberries, tree nuts, pistachio, papaya (and similar fruit), strawberries, hops, and green house tomatoes.

F. International Tolerances

Maximum residue levels (MRLs) have been established for pyridaben in Canada. No MRLs have been established by the Codex Alimentarius Commission.

[FR Doc. 03–16930 Filed 7–2–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

Special Executive Session

DATE AND TIME: Thursday, July 3, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting was closed to the public pursuant to 11 CFR 2.4(b)(1).

DATE AND TIME: Tuesday, July 8, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular.

DATE AND TIME: Thursday, July 10, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–12: Stop Taxpayer Money for Politicians Committee (''STMP'') and Representative Jeff Flake of Arizona by counsel, Benjamin L. Ginsberg.

Draft Advisory Opinion 2003–17: James W. Treffinger and Treffinger for Senate Committee by counsel, Karin Riecker.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–17026 Filed 7–1–03; 10:46 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–05]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Board.

ACTION: Notice with request for comments.

SUMMARY: In accordance with the Privacy Act of 1974 (Privacy Act), the Federal Housing Finance Board (Finance Board) is providing notice of its intent to amend its system of records to reflect agency reorganizations and regulatory changes and to add a new system of records covering Office of Inspector General investigative files.

Elsewhere in this issue of the **Federal Register**, the Finance Board is publishing an interim final rule with request for comments that revises the agency's Privacy Act regulation to reflect an agency reorganization in which responsibility and authority for running the agency's Privacy Act program was transferred to the Office of General Counsel. The Finance Board also is revising the rule to make it more ''user-friendly'' by using plain language and, where appropriate, a question-and-answer format.

DATES: This amendment will become effective as proposed without further notice on August 4, 2003 unless comments dictate otherwise. The Finance Board will accept comments in writing on or before August 4, 2003.

ADDRESSES: Send comments by electronic mail to *comments@fhfb.gov,*

by facsimile to 202/408–2580, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, ATTN: PUBLIC COMMENTS. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Senior Attorney-Advisor, Office of General Counsel, by telephone at 202/408–2505, by electronic mail at *kayej@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Pursuant to the requirements of the Privacy Act, the Finance Board is publishing a notice of an amendment to its system of records. *See* 5 U.S.C. 552a(e)(4) and (11). Some of the changes are being made to reflect agency reorganizations. More specifically, the Finance Board is amending its system of records to reflect the following changes:

- Responsibility for administering the Finance Board's Privacy Act program was transferred to the Office of General Counsel. As part of the transfer of responsibility, an OGC staff member has replaced the Secretary to the Board of Directors as the Finance Board's Privacy Act Official.
- The name of the Office of Resource Management has been changed to the Office of Management.
- The duties of the Personnel Security Officer have been transferred from the Office of General Counsel to the Office of Management.
- The Office of the Chairman assumed the duties of the former Office of Public Affairs, which was abolished in August 2002, and certain records maintained by the former Office of Public Affairs were eliminated.

The Finance Board also is amending its system of records to reflect a reorganization and renumbering of the agency's regulations. *See* 65 FR 8253 (February 18, 2000).

Since the Finance Board's Privacy Act rule includes an exemption for certain records contained in Office of Inspector General (OIG) investigative files, the notice adds a new system of records covering OIG investigative records.

For the reasons stated above, the Finance Board hereby amends its system of records originally published in the **Federal Register** in September 1995, *see* 60 FR 46120 (September 5, 1995), as amended in December 1997, *see* 62 FR 66865 (December 22, 1997) and December 1998, *see* 62 FR 66865 (December 22, 1997), as follows:

1. Amend the system of records entitled FHFB–1 Employee Attendance Records as follows:

FHFB–1

SYSTEM NAME:

Employee Attendance Records.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

These records, or information therefrom, may be disclosed as a routine use to:

* * * * *

5. In the event the information in the system of records indicates a violation or potential violation of a criminal or civil law, rule, or regulation, the relevant records may be disclosed to the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting such a violation or for enforcing or implementing a statute, rule or regulation.

6. A court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

* * * * *

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

1. Leave application files (*i.e.*, SF71s or equivalent and supporting documentation) are destroyed after three years or GAO audit, whichever is sooner.

2. Time and attendance source records and input records are destroyed after six years or GAO audit, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

* * * * *

2. Amend the system of records entitled FHFB–2 General Travel and Transportation Files as follows:

FHFB–2

SYSTEM NAME:

General Travel and Transportation Files.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former Finance Board employees.

2. Individuals invited to travel by the Finance Board, including individuals traveling to the Finance Board for pre-employment interviews and individuals invited to attend a Finance Board ceremony, meeting or similar event.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records, or information therefrom, may be disclosed as a routine use to:

* * * * *

3. In the event the information in the system of records indicates a violation or potential violation of a criminal or civil law, rule, or regulation, the relevant records may be disclosed to the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting such a violation or for enforcing or implementing a statute, rule or regulation.

4. A court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

* * * * *

6. Another federal agency in response to a request made in connection with the hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract or issuance of a grant, license or other

benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter.

7. A congressional office in response to an inquiry made at the request of the subject individual.

* * * * *

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

* * * * *

3. Amend the system of records entitled FHFB–3 Administrative Grievance Files as follows:

FHFB–3

SYSTEM NAME:

Administrative Grievance Files.

* * * * *

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

* * * * *

4. Amend the system of records entitled FHFB–4 Federal Home Loan Bank Appointive Director Eligibility Certification Forms as follows:

FHFB–4

SYSTEM NAME:

Federal Home Loan Bank Appointive Director Eligibility Certification Forms.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current Federal Home Loan Bank (FHLBank) appointive directors and candidates for appointment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain certifications of eligibility and information concerning the financial or other personal interests of current FHLBank appointive directors, candidates for appointment and their immediate families that may pose a conflict of interest under the conflicts of interest policy of the director's FHLBank.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1427(a) and (d); 12 CFR 915.10–915.12.

PURPOSE(S):

Records are collected to determine whether FHLBank appointive directors and candidates for appointment are in compliance with statutory and regulatory eligibility requirements.

* * * * *

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Records are filed by FHLBank and alphabetically by name.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Chairman, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

* * * * *

5. Remove the system of records entitled FHFB–5 Board of Directors.

6. Amend the system of records entitled FHFB–6 Agency Personnel Investigative Records as follows:

FHFB–5

SYSTEM NAME:

Personnel Investigative Records.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain information relating to the subject individual, including name, address, date and place of birth, Social Security number, citizenship, residence, foreign travel and contacts, education, personal references, organizational membership and security clearance history; investigative information regarding the subject individual's character, conduct and behavior in the community where he or she lives or lived, and arrests and convictions for violations of the law; reports from commercial credit agencies, interviews with the subject individual and with present and former supervisors, co-workers, associates, educators, etc., and inquiries with law enforcement agencies, employers, educational institutions attended; reports about the subject individual's qualifications for a specific position; correspondence relating to adjudication matters; reports of action after the OPM or Federal Bureau of Investigation section 8(d) Full Field Investigation;

and other information developed from the above.

* * * * *

PURPOSE(S):

1. Records are collected in order to make, and are maintained in order to provide documentation, if necessary, to the OPM in order to support the Finance Board's determinations concerning compliance with Federal personnel regulations, the suitability and fitness of the subject individual for federal employment and access and security clearances, and the qualifications for performance of contractual services for the U.S. Government.

2. To provide information necessary to schedule and conduct required investigations.

3. To locate individuals for personnel research.

* * * * *

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETENTION AND DISPOSAL:

Records are retained until the subject individual terminates employment at the Finance Board, at which time the records are handled in accordance with OPM policy and procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Office of Personnel Management, Federal Investigations Processing Center, FOI/PA, Boyers, Pennsylvania 16018.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD SOURCE CATEGORIES:

Subject individual, including applications and other personnel and security forms and personal interview; police, military or naval reports; notices of personnel actions and investigative and other record material furnished by Federal agencies; and personal investigation, written inquiry, or computer linkage from sources such as former employees, former employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals and other publications.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), a record contained in this system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f), to the extent that disclosure would reveal the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence.

7. Add a new system of records entitled FHFB–6 Office of Inspector General Investigative Records to read as follows:

FHFB–6

SYSTEM NAME:

Office of Inspector General Investigative Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former Finance Board employees, others involved in the Finance Board's programs or operations, and any other persons who are or have been under investigation by the Finance Board's Office of Inspector General (OIG) in order to determine whether these individuals have been or are engaging in waste, fraud or abuse with respect to the Finance Board's programs or operations or other activities that violate federal criminal laws.

2. Complainants and witnesses where necessary for future retrieval.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files on individual investigations including investigative reports and related documents generated during the course of or subsequent to an investigation. It includes electronic and hard copy case tracking systems, databases containing investigatory information, ''Hotline'' telephone logs, and investigator workpapers and memoranda and letter referrals to management or others.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 4(a)(1) and 6(a)(2).

PURPOSE(S):

These records are collected, maintained and used by the OIG in its inquiries and investigations and reports relating to the administration of the Finance Board's programs and operations and to manage the investigatory program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Under normal circumstances, the OIG will not provide individually identifiable records. However, under those unusual circumstances when the OIG must release information contained in an individually identifiable record, the OIG will maintain proper safeguards to protect the information from unwarranted invasion of personal privacy. Subject to this general limitation, these records, or information therefrom, may be disclosed as a routine use to:

1. The appropriate federal, state or local agency or authority responsible for investigating or prosecuting a violation or potential violation of a criminal or civil law, rule or regulation or for enforcing or implementing a statute, rule or regulation if information in the system of records indicates such a violation.

2. A court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

3. A congressional office in response to an inquiry made at the request of the subject individual.

4. Any source, including a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, but only to the extent necessary for the OIG to obtain information relevant to an OIG investigation.

5. Another federal agency in response to a request made in connection with the hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter.

6. Other federal entities, such as other federal Offices of Inspector General or

the General Accounting Office, or to a private party with which the OIG or the Finance Board has contracted for the purpose of auditing or reviewing the performance or internal management of the OIG's investigatory program, provided the record will not be transferred in a form that is individually identifiable, and provided further that the entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

In addition to the foregoing routine uses, a record which is contained in this system and derived from another Finance Board system of records may be disclosed as a routine use as specified in the **Federal Register** notice of the system of records from which the records derived.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, computer disks, electronic media and reports on each investigation.

RETRIEVABILITY:

Records generally are indexed by name of person under investigation, investigation number, referral number or investigative subject matter.

SAFEGUARDS:

File folders are maintained in safes or lockable metal file cabinets stored in offices that are locked when not in use. Computer disks and electronic media are locked in the lockable metal file cabinets with their related file folders, and information not so lockable is kept in individual offices in locked or passworded computer hardware. Access to the information in the cabinets and individual offices is permitted only by and to specifically authorized personnel.

RETENTION AND DISPOSAL:

Records in file folders are retained as long as needed and then destroyed by shredding. Computer disks are cleared, retired, or destroyed when no longer useful. Entries on electronic media are deleted or erased when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Inspector General, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD SOURCE CATEGORIES:

The OIG collects information from many sources including the subject individuals, employees of the Finance Board and the Federal Home Loan Bank System, other government sources, witnesses and informants, and nongovernmental sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), a record contained in this system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f), to the extent that the records consists of investigatory material compiled:

(1) For law enforcement purposes; or

(2) For the purpose of determining suitability, eligibility or qualifications for federal civilian employment or federal contracts, and if disclosure of the record would reveal the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence.

Notwithstanding the exemption, the Finance Board will provide a record if any right, privilege or benefit to which an individual would otherwise be entitled by Federal law, or for which the individual otherwise would be eligible, is denied as a result of the maintenance of the record, except to the extent that disclosure of the record would reveal the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence.

Dated: June 18, 2003.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–16561 Filed 7–2–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement Of Board Approval Under Delegated Authority And Submission To OMB

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I;s and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer –Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Joseph Lackey—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Reporting and Disclosure Requirements in Connection with Regulation W (12 CFR Part 223 Transactions Between Member Banks and Their Affiliates)

Agency form number: Reg W

OMB Control number: 7100–0304

Frequency: Event–generated

Reporters: Insured depository institutions and uninsured member banks

Estimated annual reporting hours: 250 hours

Estimated average hours per response: Loan participation renewal notice, 2 hours. Acquisition notice, 6 hours. Internal corporate reorganization transactions notice, 6 hours. Section 23A additional exemption notice, 10 hours.

Estimated number of respondents: 45 Small businesses are affected.

General description of report: This information collection is required to

evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c(f) and 371c–1(e)). Confidential and proprietary information collected for the purposes of the Loan Participation Renewal 12 CFR 223.15(b)(4) and Internal Corporate Reorganization Transactions 12 CFR 223.41(d)(2) notices may be protected under the authority of the Freedom of Information Act [5U.S.C. § 552(b)(4) and (b)(8)]. Section (b)(4) exempts information deemed competitively sensitive from disclosure and Section (b)(8) exempts information ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.''

Abstract: On December 12, 2002, the Board of Governors of the Federal Reserve published a Federal Register notice adopting a final rule (Regulation W) to implement comprehensively sections 23A and 23B of the Federal Reserve Act and provide several new exemptions consistent with the purposes of the statute (67 FR 76603), effective April 1, 2003. The Paperwork Reduction Act section of this notice contained a request for public comment on the information collection in Reg W. The Federal Reserve did not receive any comments on this request. Pursuant to 5 CFR 1320.16 this is a final notice announcing the Board's approval of the information collection.

Board of Governors of the Federal Reserve System, June 27, 2003.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 03–16882 Filed 7–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Beverly Financial, MHC, Beverly, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Beverly Co–Operative Bank, Beverly, Massachusetts.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. RB Bancorporation, Athens, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Reliance Bank, Athens, Alabama.

Board of Governors of the Federal Reserve System, June 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–16837 Filed 7–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 28, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to acquire Superior Financial Corp., Little Rock, Arkansas, and thereby indirectly acquire Superior Bank, Fort Smith, Arkansas, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Applicant also has applied to engage in operating a consumer finance company through Superior Finance Company, Fort Smith, Arkansas; in discount brokerage and investment advisory services through Superior Financial Services, Inc., Fort Smith, Arkansas; acting as a general insurance agency or broker to sell all lines of insurance or insurance related products in a town of less than 5,000 in population through Superior Insurance Service, Inc., Paris, Arkansas; and sell consumer credit life and disability insurance to consumer borrowers of the savings association through Southwest Protective Life Insurance Company, Fort Smith, Arkansas, pursuant to sections 225.28 (b)(1), (b)(7)(i), (b)(11)(i), and (b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, June 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–16836 Filed 7–2–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the inaugural meeting of the Secretary's Advisory Committee on Human Research Protections (SACHRP). The meeting will be open to the public, with attendance limited to space available. Individuals must provide a photo ID for entry into the meeting. 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.

DATES: The meeting will be held on Tuesday, July 22, 2003, and will convene EDT from approximately 8:30 a.m. to 5 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 800, 200 Independence Ave., SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Bernard Schwetz, D.V.M., PhD., Acting Executive Secretary, Secretary's Advisory Committee on Human Research Protections, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852 (301) 496–7005, fax: (301) 402–0527, email address: *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACHRP to provide expert advice and recommendations to the Secretary of HHS and the Assistant Secretary for Health on issues and topics pertaining to or associated with the protection of human research subjects.

At this inaugural meeting, SACHRP will review the activities which were not completed by the former National Human Research Protections Advisory Committee before its charter expired. SACHRP also will begin to plan and prioritize its activities for the next 24 months. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to SACHRP members should submit materials to the Acting Executive Secretary of SACHRP (contact information listed above) prior to close of business July 16, 2003.

Information about SACHRP and the draft meeting agenda will be posted on the SACHRP Web site at: *http://ohrp.osophs.dhhs.gov/sachrp/sachrp.htm.*

Dated: June 26, 2003.

Bernard A. Schwetz,

Acting Executive Secretary, Secretary's Advisory Committee on Human Research Protections, Acting Director, Office for Human Research Protections.

[FR Doc. 03–16792 Filed 7–2–03; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–03–06]

Fiscal Year 2003 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for eight (8) to ten (10) projects at a federal share of approximately $30,000 per year for a project period of one year.

Legislative authority: The Older Americans Act, Public Law 106–501 (Catalog of Federal Domestic Assistance 93.048, Title IV and Title II, Discretionary Projects).

Purpose of grant awards: To continue the Performance Measures Outcomes Project (POMP), AoA will fund new grant awards to support the development of new or revised program performance measures for programs funded under Title III of the Older Americans Act. The purpose of this competition is for States to work collaboratively in the development of recipient surveys to: (1) Refine current performance measurement tools for (a) home delivered meals/congregate meals programs, (b) the National Family Caregiver Support Program, and (c) case management, and (2) develop new performance measurement tools focusing on clients of senior centers.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to State Units on Aging.

Grantees are required to provide at least 25 percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award. Executive Order 12372 is not applicable to these grant applications.

Screening criteria: In order for an application to be reviewed, it must meet the following screening requirements:

1. Applications must be postmarked or submitted electronically by midnight, or hand-delivered by 5 p.m., on August 4, 2003. Electronic submissions must be sent to: *http//www.aoa.gov/egrants.*

2. The Project Narrative section of the Application must be double-spaced, on single-sided 8½″ × 11″ plain white paper with 1″ margins on both sides, and must have a font size of not less than 11.

3. The project narrative must not exceed 25 pages.

Review of applications: Applications will be evaluated against the following criteria: Purpose and Need for Assistance (20 points); Approach, Work Plan and Activities (30 points); Project Outcomes, Evaluation and Dissemination (30 points); Level of Effort (20 points).

DATES: The deadline date for the submission of applications is August 4, 2003.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, by calling (202) 357–0145, or online at *http://www.aoa.gov/egrants.*

Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (AoA–03–06).

Applications may be delivered to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Margaret Tolson (AoA–03–06). If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants/*

SUPPLEMENTARY INFORMATION: All grant applicants are encouraged to obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free

and easy to obtain from *http://www.dnb.com/US/duns_update/.*

FOR FURTHER INFORMATION CONTACT: U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, telephone: (202) 357–0145.

Dated: June 30, 2003.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 03–16839 Filed 7–2–03; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–10091]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection; *Title of Information Collection:* UPIN (UPIN Physician Identification Number) Participating Directory/Accepting New Patients Indicator; *Form No.:* CMS–10091 (OMB# 0938–NEW); *Use:* In November of 2000, CMS launched the Participating Physicians Directory on *http://www.medicare.gov.* This particular directory was created to provide beneficiaries with the names, addresses, and specialties of Medicare participating physicians who have agreed to accept assignment on all Medicare claims and covered services. CMS is adding information from already existing sources; in addition, CMS wants to collect a new data element ''Accepting New Patients Indicator'' which is essential to a beneficiary's search for a physician; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 109,800; *Total Annual Responses:* 10,980; *Total Annual Hours:* 915.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 26, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–16815 Filed 7–2–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0286]

Agency Information Collection Activities: Proposed Collection; Comment Request; User Fee Cover Sheet; Form FDA 3397

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on Form FDA 3397, User Fee Cover Sheet that must be submitted along with certain drug and biologic product applications and supplements.

DATES: Submit written or electronic comments on the collection of information by September 2, 2003.

ADDRESSES: Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information

on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

User Fee Cover Sheet; Form FDA 3397 (OMB Control Number 0910–0297)—Extension

Under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), the Prescription Drug User Fee Act of 1992 (PDUFA) (Public Law 102–571), as amended by the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), and the Prescription Drug User Fee Amendments of 2002 (Public Law 107–188), FDA has the authority to assess and collect user fees for certain drug and biologics license applications and supplements. Under this authority, pharmaceutical companies pay a fee for certain new human drug applications, biologics license applications, or supplements submitted to the agency for review. Because the submission of user fees concurrently with applications and supplements is required, review of an application by FDA cannot begin until the fee is submitted. Form FDA 3397, the user fee cover sheet, is designed to provide the minimum necessary information to determine whether a fee is required for review of an application, to determine the amount of the fee required, and to account for and track user fees. The form provides a cross-reference of the fee submitted for an application with the actual application by using a unique number tracking system. The information collected is used by FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) to initiate the administrative screening of new drug applications, biologics license applications, and supplemental applications.

Respondents to this collection of information are new drug and biologics manufacturers. Based on FDA's database system for fiscal year (FY) 2002, there are an estimated 225 manufacturers of products subject to PDUFA. However, not all manufacturers will have any submissions and some may have multiple submissions in a given year. The total number of annual responses is based on the average number of submissions received by FDA in FY 2000 through 2002. CDER estimates 2,494 annual responses that include the following submissions: 105 new drug applications; 1,557 chemistry supplements; 670 labeling supplements; and 162 efficacy supplements. CBER estimates 737 annual responses that include the following submissions: 11 biologics license applications; 640 manufacturing (chemistry) supplements; 72 labeling supplements; and 14 efficacy supplements. Based on previous estimates, the rate of submissions is not expected to change significantly in the next few years. The estimated hours per response are based on past FDA experience with the various submissions and range from 5 to 30 minutes. The hours per response are based on the average of these estimates.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3397	225	14.36	3,231	0.30	969

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 24, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–16791 Filed 7–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0080]

Guidance for Industry: Streamlining the Donor Interview Process: Recommendations for Self-Administered Questionnaires; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Streamlining the Donor Interview Process: Recommendations for Self-Administered Questionnaires'' dated July 2003. The guidance document provides guidance to blood and plasma establishments on the recommendations of FDA for implementing self-administered donor questionnaires at the predonation donor screening interview. The guidance document also describes the information to be included in a biologics license application supplement or annual report for the implemented changes. The guidance supersedes section I.A of FDA's memorandum dated April 23, 1992, entitled ''Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products,'' and finalizes the draft guidance of the same title dated April 2002.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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

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

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for industry: Streamlining the Donor Interview Process: Recommendations

for Self-Administered Questionnaires,'' dated July 2003. The guidance is intended to provide recommendations to the blood and plasma establishments on the changes from the current predonation donor screening interview procedure to a self-administered format. The guidance also describes the information to be included in a biologics license application supplement or annual report for the implemented changes. The guidance does not address the informed consent process or specific screening questions, a specific questionnaire, or how to submit changes to the questions on a currently approved questionnaire. The guidance supersedes section I.A of FDA's memorandum dated April 23, 1992, entitled ''Revised Recommendations for the Prevention of Human Immunodeficiency Virus (HIV) Transmission by Blood and Blood Products,'' and finalizes the draft guidance of the same title dated April 2002.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: June 24, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–16790 Filed 7–2–03; 8:45 am]

BILLING CODE 4160–01–S

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: Application Requirements for the Adjustment of Status under Section 586 of Public Law 106–249; OMB–27.

The Department of Homeland Security, 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 approved by OMB under emergency review proceedings on December 13, 2002 and the agency was granted temporary approval.

The BCIS intends to request an extension of this information collection. Therefore, the purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 4, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application Requirements for the Adjustment of Status under Section 586 of Public Law 106–249.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; File No. OMB–27, 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 data is used by the agency to determine an applicant's eligibility for adjustment of status under section 586 of Public Law 106–249.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5,000 responses at 30 (.05) minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services, Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the 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.

Dated: June 27, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–16796 Filed 7–2–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; Application for Waiver of Ground of Excludability, Form I–601.

The Department of Homeland Security (DHS) Bureau of Citizenship and Immigration Services (BCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. BCIS is requesting emergency review from OMB of this information collection to ensure benefits of an applicant under section 212 of the Immigration and Nationality Act. Therefore, OMB approval has been requested by June 30, 2003. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Karen Lee, DHS Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Lee at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until September 2, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Room 4307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of Ground of Excludability.

(3) *Agency form number, iF any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–601. 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 information collected on this form will be used by the BCIS to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Room 4307, 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.

Dated: June 27, 2003.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–16797 Filed 7–2–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 26, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–16597 Filed 7–2–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, As Amended; Addition of a New System of Records

AGENCY: Department of the Interior.

ACTION: Proposed addition of a new system of records.

SUMMARY: The Department of the Interior (DOI) is issuing public notice of its intent to add a new Privacy Act system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). The Privacy Act requires publication of a **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S.C. 552 a(e)(4)). The new system of records is called the OS–14: Take Pride In America System.

DATES: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed system of records may do so by submitting comments in writing to the Office of the Secretary, Freedom of Information Act/Privacy Act Officer, U.S. Department of the Interior, National Business Center, MS 1414 MIB, 1849 C Street, NW., Washington, DC 20240, or by e-mail at *osfoia@nbc.gov*. Comments received within 40 days of publication in the **Federal Register** (August 14, 2003), will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. In that case, the Department will publish any changes to the routine uses.

FOR FURTHER INFORMATION CONTACT: Executive Director, Take Pride In America, at *TakePride@ios.doi.gov* or by mail at MS–3459–MIB, 1849 C St., NW., Washington, DC 20240. Phone: 202–208–5848. Fax: 202–208–5873.

SUPPLEMENTARY INFORMATION: The Take Pride In America System will contain information on organizations and individuals nominated for Take Pride in America awards under the Take Pride In America Act. This information is needed for the Department to judge the candidates for the awards, as well as for administering the TPIA Program national public awareness campaign. A copy of the system notice for the ''Take Pride In America System'' OS–14 follows.

Dated: June 16, 2003.

Sue Ellen Sloca,

Office of the Secretary, Freedom of Information/Privacy Act Officer, National Business Center.

INTERIOR/OS–14

SYSTEM NAME:

Take Pride In America System—Interior, OS–14.

SECURITY CLASSIFICATION:

Not classified.

SYSTEM LOCATION:

Department of the Interior, Take Pride In America Program, Office of the Secretary, MS–3459 MIB, 1849 C Street, NW., Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or contacts for organizations nominated for a Take Pride In America (TPIA) Award, and individuals who provide nominations.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Name of Individual/Organization being nominated, plus contact information;
- Category of award;
- Name and contact information for person submitting the nomination;
- Description of project or activity which forms basis of award, for example:
- Location of project or activity, State, ownership, U.S. Congressional District
- Length of project or activity,
- Subject area/type of project,
- Total volunteer hours donated, total number of people involved,
- Description, objective, results, outcomes;
- Community or partnership references and sources of funding or materials donations; and
- Other information necessary to manage the public awareness component of the TPIA program.

Only records relating to individuals are covered by the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authorization is granted in the Take Pride In America Act, 16 U.S.C. 4601–4608.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to collect information on the activities of potential awardees, to consider them for awards, to select award winners, and for other necessary actions to further the purposes of the Take Pride In America Program public awareness campaign to increase volunteerism in the U.S. and foster increased stewardship of public resources.

Disclosures outside of the Department of the Interior may be made—

(1) To an expert, consultant, contractor (including employees of the contractor), States' Liaisons, or TPIA Blue Ribbon panel of the Department performing, on the Department's behalf, services related to the TPIA awards program requiring the use of these records.

(2) To another agency or organization for purposes consistent with the TPIA purposes identified above.

(3)(a) To any of the following entities or individuals:

(i) The Department of Justice (DOJ);

(ii) A court, adjudicative or other administrative body;

(iii) A party in litigation before a court or adjudicative or administrative body;

(iv) The Department or any component of the Department;

(v) Any Department employee acting in his or her official capacity; or

(vi) Any Departmental employee acting in his or her individual capacity if the Department or the DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When—

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) The Department or any component of the Department;

(B) Any Department employee acting in his or her official capacity;

(C) Any Departmental employee acting in his or her individual capacity if the Department or the DOJ has agreed to represent that employee or pay for private representation of the employee;

(D) The United States, when the DOJ determines that the Department is likely to be affected by the proceeding; and

(ii) The Department deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purposes for which the records were compiled.

(4) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when the Department becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(5) To a congressional office in response to an inquiry an individual covered by the system has made to the congressional office about him or herself.

(6) To a debt collection agency for the purpose of collecting outstanding debts

owed to the Department for fees associated with processing FOIA/PA requests.

(7) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored both in file folders and in electronic form, in computer systems.

RETRIEVABILITY:

Information from the System will be retrievable by name of nominated individual or organization, nominator, control number, Congressional District, type of activity, and site location.

SAFEGUARDS:

Access to records in the system is limited to authorized personnel whose official duties require such access. Paper records are maintained in locked file cabinets and/or in secured rooms. Electronic records conform to Office of Management and Budget and Departmental guidelines reflecting the implementation of the Computer Security Act of 1987 (40 U.S.C. 759). Electronic data will be protected through user identification, passwords, database permissions and software controls. Such security measures will establish access levels for different types of users.

RETENTION AND DISPOSAL:

Records of winners and finalists will be kept permanently. Records of other nominations will be kept 10 years, and then destroyed.

SYSTEM MANAGER AND ADDRESS:

Executive Director, Take Pride In America Program, Office of the Secretary, MS–3459 MIB, 1849 C Street, NW., Washington, DC 20240.

NOTIFICATION PROCEDURES:

A request for information regarding this system of records must be in writing, signed by the requester, and include the requester's full name, address, year(s) activity was nominated, and location of activity.

RECORD ACCESS PROCEDURES:

For a copy of your record, write to the System Manager at the location above, providing the same information specified in the Notification Procedures. The request envelope and letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.''

CONTESTING RECORD PROCEDURES:

To ask for changes to your records, write to the System Manager at the location above, providing the same information specified in Notification Procedures, as well as an explanation of what you believe should be changed.

RECORD SOURCE CATEGORIES:

Information from this system comes primarily from the person nominating the individual/organization for an award. The nominating party can be either the individual/organization nominated or a third party.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–16869 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Federal Subsistence Regulations and Associated Forms (50 CFR part 100)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. 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: We will accept comments until August 4, 2003.

ADDRESSES: Submit your comments on this information collection renewal 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 CONTACT: 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 part 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) has submitted a request to OMB to renew its approval of the collection of information related to the Federal Subsistence Regulations (50 CFR part 100) and their associated forms. 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.

Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101) designates the Departments of the Interior as the key agency responsible for implementing the subsistence priority on Federal public lands for rural Alaska residents. This responsibility includes the establishment of permits for rural residents to participate in special hunts. In addition, our regulations at 50 CFR part 100.20 provide for the appeal of Federal Subsistence Board decisions by persons affected by those decisions.

On January 16, 2003, we published in the **Federal Register** (68 FR 2347) a notice informing the public that we are submitting the information collection described below to OMB for approval under the Paperwork Reduction Act. We requested public comment on the forms for 60 days, ending March 17, 2003. By that date, we did not receive any comments.

Regulation Citation: 50 CFR part 100.6.

OMB Number: 1018–0075.

Service Form Name and Number: Federal Subsistence Hunt Application, Permit, and Report, Form 7FS–1.

Frequency of Collection: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: We estimate the reporting burden to average 0.25 hours per respondent. The total annual burden is 1,225 hours.

Total Annual Responses: 4,900.

Regulation Citation: 50 CFR part 100.6.

OMB Number: 1018–0075.

Service Form Name and Number: Designated Hunter Permit Application, Permit, and Report, Form 7FS–2.

Frequency of Collection: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: We estimate the reporting burden to average 0.25 hours per respondent. The total annual burden is 100 hours.

Total Annual Responses: 400.

Regulation Citation: 50 CFR part 100.6.

OMB Number: 1018–0075.

Service Form Name and Number: Federal Subsistence Fish/Shellfish Harvest/Designated Harvester Application, Permit, and Report, Form 7FS–3.

Frequency of Collection: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: We estimate the reporting burden to average 0.5 hours per respondent. The total annual burden is 62.5 hours.

Total Annual Responses: 125.

Regulation Citation: 50 CFR part 100.20.

OMB Number: 1018–0075.

Description: Request for an appeal of a Federal Subsistence Board decision.

Frequency of Collection: On occasion.

Description of Respondents: Federally defined rural residents.

Total Annual Burden Hours: We estimate the reporting burden to average 4 hours per respondent. The total annual burden is 4 hours.

Total Annual Responses: 1.

We again invite comments concerning this proposed information collection on: (1) Whether the collection of information is necessary for the proper performance of our 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 30, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–16861 Filed 7–2–03; 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 August 4, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–073633

Applicant: Cincinnati Zoo and Botanical Garden, Cincinnati, OH

The applicant requests a permit to import frozen embryos obtained from captive held ocelots (*Leopardus pardalis mitis*) from the Associacao Mata Ciliar, the Brazilian Ocelot Studbook Keeper, for scientific research purposes. This notification covers activities conducted by the applicant over a five year period. If issued permit must be renewed annually.

PRT–072953

Applicant: Zoological Society of San Diego @ San Diego Wild Animal Park, Escondido, CA

The applicant requests a permit to export four captive hatched Andean condors (*Vultur gryphus*) to the Calidad Ambiental de la CAR Cundinamarca, Santefe de Bogota, Columbia, for reintroduction into the wild to enhance the survival of the species.

PRT–073050

Applicant: Roger Williams Park Zoo, Providence, RI

The applicant requests a permit to import twenty-one parma wallabies (*Macropus parma*) from the feral population on Kawau Island, New Zealand, for the purpose of enhancement of the survival of the species through captive propagation. The parma wallaby was introduced to Kawau Island and is subject to eradication efforts by the New Zealand government. The import of these animals would serve as an alternative to extermination and introduce new founder stock into captive breeding efforts. The animals would be maintained at Cape May County Zoo, Fort Worth Zoo, North Carolina Zoo, San Antonio Zoo and Sunset Zoo.

PRT–073523

Applicant: Mance M. Park, Huntsville, TX

The applicant requests a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

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: June 20, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–16831 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species.

SUMMARY: The following permits were issued.

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 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: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* **(16 U.S.C. 1531,** *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
063702	S.O.S. Care, Inc	68 FR 22409; April 28, 2003.	June 4, 2003
064172	Exotic Feline Breeding Compound, Inc	68 FR 15477; March 31, 2003	June 12, 2003.
069654	Russell Davis	68 FR 20019; April 23, 2003	June 9, 2003.
068234 thru 068244	Hawthorn Corporation	68 FR 20166; April 24, 2003	June 10, 2003.
069429, 069439, 069443	Steve Martin's Working Wildlife	68 FR 20166; April 24, 2003	June 10, 2003.
070682	Andrew K. Stahl	68 FR 22409; April 28, 2003	June 9, 2003.
072856	Robert J. Le Mieux	67 FR 76183; December 11, 2002 (as PRT–065433).	June 11, 2003.

Dated: June 13, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–16832 Filed 7–2–03; 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 August 4, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–073077

Applicant: Arthur L. Rathburn, Grosse Pointe Park, MI

The applicant request a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–073130

Applicant: Marshall N. Rush, Pine Bluff, AR

The applicant request a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–073162

Applicant: Ancil L. Lindley, III, Crestview, FL

The applicant request a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–073242

Applicant: Gary M. Story, Edmond, OK

The applicant request a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be

appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–071628

Applicant: Dr. Iskande Larkin, University of Florida, Gainesville, FL

The applicant requests a permit to import fecal samples deposited by captive-held manatees (*Trichechus manatus*) from Mexico for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–073125

Applicant: Christopher K. Fannin, Ashland, KY

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–073132

Applicant: Juan B. Suarez, Coral Gables, FL

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

PRT–073481

Applicant: Gerald E. Meyer, Sr., Waterford, WI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

PRT–073227

Applicant: Charles Dennis Anderson, Anaheim, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: June 13, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–16833 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment/ Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Struthers Ranch, El Paso County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Struthers Ranch Development, LLC, (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's), federally listed as threatened, through loss and modification of its habitat associated with construction of a residential and commercial development in El Paso County, Colorado. The duration of the permit would be 30 years from the date of issuance.

We announce the receipt of the Applicant's incidental take permit application that includes a combined Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the Preble's for the Struthers Ranch Property. The proposed EA/HCP is available for public review and comment. It fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the EA/HCP for the proposed issuance of the incidental take permit. We provide this notice pursuant to section 10(a) of the ESA and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the EA/HCP and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and EA/HCP should be received on or before September 2, 2003.

ADDRESSES: Comments regarding the permit application and EA/HCP should be addressed to Allan Pfister, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments also may be submitted by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the EA/HCP and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the ESA and Federal regulation prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the ESA, in part, as to kill, harm, or harass a federally-listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental take is defined under the ESA as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Struthers Ranch Property is located along Black Forest Creek on the east side of Interstate 25, roughly 5.6 kilometers (3.5 miles) southeast of the Town of Monument, in northwestern El Paso County, Colorado. The specific legal description for the property is Section 36 of Township 11 South, Range 67 West (S½ of SE¼; S½ of NE¼ and NW¼ of SE¼; SE¼ of SW¼; and NE¼ of SW¼). The project site is 43 hectares (107 acres) with development proposed for 27 hectares (67 acres). Of the 27 hectares (67 acres) proposed for development, the Applicant, using the Service's definition of Preble's habitat, has determined that the proposed project would impact approximately 6.6 hectares (16.4 acres) of potential Preble's habitat, which includes 0.5 hectare (1.2 acres) of off-site impacts. Of the 6.6 hectares (16.4 acres) of construction within Preble's habitat, only 1 hectare (2.5 acres) of wetland vegetation will be impacted because of construction of a box culvert crossing over Black Forest Creek, a utility easement, and drop structures and rip-

rap used to stabilize the drainage. Drainage instability has resulted in past flood damage to riparian vegetation, which has been exacerbated by cattle grazing leading to sparse vegetation in most areas. The proposed action proposes to stabilize the drainage and repair this past damage through extensive planting and reseeding. Remaining disturbance to Preble's habitat on Struthers Ranch would be confined to upland grassy areas. The remaining 16.4 hectares (40.3 acres) of Struthers Ranch not proposed for construction will remain undeveloped. Of the total amount of impacted acreage, 0.5 hectare (1.1 acres) will be temporarily disturbed.

Alternatives considered in addition to the Proposed Action, included waiting for the approval of the El Paso County Regional HCP, an increased impact alternative, and no action. The draft EA analyzes the onsite, off-site, and cumulative impacts of the proposed project and all associated development and construction activities and mitigation activities on the Preble's, other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, or cultural resources.

An HCP has been developed as part of the preferred alternative which is proposed to offset impacts associated with construction of Preble's habitat. The proposed HCP will allow for the incidental take of the Preble's by permitting residential and commercial development to be constructed in an area that may be periodically used as foraging or hibernation habitat. The proposed action has been designed to minimize impacts to the riparian vegetation along Black Forest Creek and limits development to the highest elevations on the parcel. This will facilitate development on the property while minimizing, to the greatest extent practicable, impacts to Preble's habitat and waters of the United States. In addition, the proposed action includes extensive onsite conservation measures, as described in section 6.0 (HCP), to repair damage from current cattle grazing practices, poor watershed management upstream, and the heavy flood events. This will result in an overall improvement in the stability of the drainage, which will, in turn, improve vegetation quality and diversity within the onsite Preble's habitat.

Onsite mitigation is planned for approximately 14.4 hectares (35.5 acres) with varying amounts of restoration, enhancement, and creation of onsite Preble's habitat as described in the HCP (see section 6.0). This results in a mitigation ratio of 2.168:1 for temporary impacts as well as permanent impacts. The mitigation will likely provide a net benefit to the Preble's and other wildlife by improving and creating new riparian areas, planting of native shrubs and grasses, and protecting existing habitat along Black Forest Creek from any future development.

To mitigate impacts that may result from incidental take, the HCP provides mitigation for the residential and commercial site by protection of the Black Forest Creek corridor onsite and its associated riparian areas from all future development. Of the 14.4 hectares (35.5 acres) of mitigation area, restoration and enhancement will occur on 8 hectares (20 acres) of upland areas and restoration will occur on 2 hectares (5 acres) of riparian areas. Restoration and enhancement will be achieved through planting and seeding of native woody, herbaceous, and grassy species, and a combination of removing grazing pressures and noxious weed control. Additionally, limited enhancement will occur on 3.3 hectares (8.1 acres) of uplands. Limited enhancement will consist of weed control and the removal of grazing to encourage existing native grass recovery. No seeding or planting will occur in these areas. Habitat creation will occur on an additional 1 hectare (2.5 acres) including an area proposed for a detention pond in the southwest corner of the property located outside of Preble's habitat and within a Preble's habitat buffer area currently occupied by ranch house outbuildings. Measures will be taken during construction to minimize impact to the habitat, including the use of silt fencing to reduce the amount of sediment from construction activities that reaches the creek. All of the proposed mitigation area is within the boundaries of the Struthers Ranch property, all of which is included in the drainage basin of Black Forest Creek.

The 14.4 hectares (35.5 acres) of undeveloped land along Black Forest Creek will be maintained as a preservation area with extensive conservation measures to restore and enhance vegetation for local wildlife use.

This notice is provided pursuant to section 10(c) of the ESA. We will evaluate the permit application, the EA/HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the ESA. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the residential and commercial construction of Struthers Ranch. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: June 18, 2003.

Paul E. Gertler,

Acting Regional Director, Region 6.

[FR Doc. 03–16838 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted with this application 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 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: Notice is hereby given that on the date below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
069177	Felix F. Gardina	68 FR 20020; April 23, 2003	June 9, 2003.
070369	Raymond A. Young	68 FR 20166; April 24, 2003	June 10, 2003.
740507	Alaska Science Center	68 FR 20166; April 24, 2003	June 20, 2003.

Dated: June 20, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–16830 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compacts.

SUMMARY: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary b Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compacts between the Colorado River Indian Tribes and the State of Arizona and between the Zuni Tribe and the State of Arizona. These Compacts expand the scope of gaming activities authorized under the Compacts, increases wager limits, increases the number of permitted gaming devices, and allows the tribes to enter into gaming device transfer agreements with one or more gaming tribes.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 18, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–16826 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact Amendment taking effect between the Ho-Chunk Nation and the State of Wisconsin.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Second Amendment to the Gaming Compact of 1992 between the Ho-Chunk Nation and the State of Wisconsin executed on April 25, 2003 are considered approved. By the terms of IGRA, the Second Amendment to the Compacts are considered approved, but only to the extent that the Second Amendments are consistent with the provisions of IGRA.

The Second Amendment expands the scope of gaming activities authorized under the Compact, removes limitations on wager limits, removes limitations on the number of permitted gaming devices, extends the terms of the compact to an indefinite term, subject to re-opener clauses, institutes an entirely new dispute resolution provision, replaces the sovereign immunity provision, and modifies the revenue-sharing provision of the Compact.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 19, 2003.

Woodrow W. Hooper, Jr.,

Acting Deputy Assistant Secretary for Management.

[FR Doc. 03–16824 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact Amendments to the Sokaogon Chippewa Community and the State of Wisconsin Gaming compact of 1991, as amended February 20, 1998 Taking Effect.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary-Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the 2003 Amendments to the Sokaogon Chippewa Community and the State of Wisconsin Gaming Compact of 1991, as Amended February 20, 1998 executed on April 25, 2003 are considered approved. By the terms of IGRA, the 2003 Amendments to the Compact are considered approved, but only to the extent the 2003 Amendments are consistent with the provisions of IGRA.

The 2003 Amendments expand the scope of gaming activities authorized under the Compact, remove limitations on wager limits, remove limitations on the number of permitted gaming devices, extend the term of the compact to an indefinite term, subject to re-opener clauses, institute an entirely new dispute resolution provision, replaces the sovereign immunity provision, and modify the revenue-sharing provision of the Compact.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 18, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–16825 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Expiring Contracts; Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the National Park Service Concessions Management Improvement Act of 1998, notice is hereby given that the National Park Service intends to issue a temporary contract authorizing operation of marina, campground, food service and sundry sales at Fire Island National Seashore. The temporary contract will be for a term not-to-exceed 1 year. This short-term concession contract is necessary to avoid interruption of visitor services while the National Park Service completes the ongoing financial analysis and issues a prospectus for a long-term contract. This notice is pursuant to 36 CFR part 51, section 51.24(a).

SUPPLEMENTARY INFORMATION: The current concession contract at Fire

Island NS (Watch Hill) will expire by its terms on December 31, 2002. The National Park Service has determined that the proposed 1-year extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to develop a prospectus leading to competitive selection for a new long-term concession contract.

Concessioner ID No.: CC–FIIS002.
Concessioner Name: Davis Park Marine Services, Inc.
Park: Fire Island National Seashore.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7144.

Dated: May 19, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–16799 Filed 7–2–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts and Permits: Expiring Contracts; Extension

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contract listed below has been extended to the maximum allowable under 36 CFR 51.23. Under the provisions of the current concession contract and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed one year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Concessioner ID No.: FIIS004.
Concessioner Name: Howard T. Rose Company, Inc.
Park: Fire Island National Seashore.

EFFECTIVE DATE: July 3, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: May 9, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–16800 Filed 7–2–03; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Decision Record and Finding of No Significant Impact (FONSI) for the Improvements to Trails and Overlooks at Great Falls Park, VA

AGENCY: National Park Service, Interior.

ACTION: Availability of the Decision Record and FONSI for the proposal to improve the trails and overlooks at Great Falls Park, Virginia.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the availability of the Decision Record and FONSI for the improvement to the trails and overlooks at Great Falls Park, a unit of the George Washington Memorial Parkway (GWMP). The Decision Record and FONSI identifies Alternative C1 as the preferred and environmentally preferred alternative in the ''Improvements to Trails and Overlooks at Great Falls Park, Virginia'' Environmental Assessment (EA). Under this alternative the existing Overlook 1, Overlook 2, and the chain-link fence at the Jetty Overlook would be removed and new replacement structures built in the same locations. A loop trail/boardwalk would be constructed through the area between the visitor center and the river. Two additional overlooks would be built at the Shade Tree/Jetty area. This alternative, however, does not provide for the stabilization and restoration of the area between Overlooks 1 and 2 and the Fisherman's Eddy access, pending future investigations to determine whether such improvements are feasible and sustainable. Concern was raised during the EA process about impacts of the preferred alternative on a state listed (S1) plant species. The park determined that potential impacts to these rare plants could be greatly reduced if the proposed configuration of Overlook 1 were shifted to the downriver side of the existing overlook rather than the proposed upriver side.

DATES: The EA, upon which the FONSI was made, was available for public comment from November 5 to December 5, 2001. A total of six comments were received during the 30-day public comment period from park user groups and neighboring government agencies. All supported the park in the preferred alternative and most recommended that further study be done to improve the Fisherman's Eddy Access.

ADDRESSES: The Decision Record and FONSI will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, VA, and is available on the park's Web site at *http://www.nps.gov/gwmp.*

SUPPLEMENTARY INFORMATION: The Decision Record and FONSI completes the Environmental Assessment process.

FOR FURTHER INFORMATION CONTACT: Natural Resource Specialist, Heather Germaine (703) 289–2540.

Dottie Marshall,

Acting Superintendent, George Washington Memorial Parkway.

[FR Doc. 03–16801 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–DL–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from a cave facing Crab Bay, Kruzof Island, Sitka Borough, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not

responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of Central Council of the Tlingit & Haida Indian Tribes and Sitka Tribe of Alaska.

In 1931, human remains representing a minimum of one individual were collected by six students of the Sheldon Jackson School from a cave facing Crab Bay, Kruzof Island, Sitka Borough, AK. W. Leslie Yaw, superintendent of the school, sold them to the American Museum of Natural History in 1932. No known individual was identified. The eight associated funerary objects are a carved bentwood box, the box lid, cord, matting cover, a raven's tail blanket fragment, shredded bark, and two digging sticks.

The individual has been identified as Native American based on the American Museum of Natural History's documentation and geographic information. The original catalog describes the remains as ''Tlingit,'' and their geographic origin is consistent with the postcontact territory of the Sitka Tlingit (present-day Sitka Tribe of Alaska). Consultation information provided by the Sitka Tribe of Alaska indicates that the carving on the bentwood box represents the frog crest of the Sitka Kiks.adi clan. Raven's tail blankets, of the type found associated with this burial, were made by the Tlingit immediately prior to and at the time of contact with non-native traders and settlers. Scholarly publications and consultation information provided by the Sitka Tribe of Alaska indicate that the Sitka Kiks.adi clan inhabited Kruzof Island when Russians first arrived there. The Sitka Kiks.adi clan is represented by the Sitka Tribe of Alaska.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the eight objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Sitka Tribe of Alaska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024–5192, telephone (212) 769–5846, before August 4, 2003. Repatriation of the human remains and associated funerary objects to the Sitka Tribe of Alaska may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying Central Council of the Tlingit & Haida Indian Tribes and Sitka Tribe of Alaska that this notice has been published.

Dated: May 23, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–16805 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate a cultural item in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, that meets the definitions of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of this cultural item. The National Park Service is not responsible for the determinations within this notice.

The one cultural item is a 4-inch long piece of stone carved in the shape of a horse.

During 1999 and 2000, the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, participated in an undercover investigation of several individuals believed to be engaged in the illegal trafficking of Native American cultural items. Federal agents purchased or seized several cultural items as part of the investigation. On September 10, 2002, Joshua Baer and Thomas Cavaliere each pled guilty to three counts of illegal trafficking of Native American cultural items obtained in violation of 18 U.S.C. 1170 (b). On January 3 and February 12, 2003, the U.S. District Court for the District of New Mexico ordered that all items seized during the investigation be forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, and repatriated to the culturally affiliated Indian tribes. The carved stone fetish is one of the items forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, prepared a summary of the cultural items obtained during the investigation. The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also consulted with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of the Pueblo of Laguna, New Mexico identified the carved stone as a fetish having ongoing religious and ceremonial significance to the pueblo as a whole. The tribal representative explained that such stone fetishes are to be forever protected as part of Laguna tradition. While the stone fetish may have been held by an individual, it is considered the communal property of the Pueblo of Laguna, New Mexico and could not have been sold.

Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(C), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have

determined that, pursuant to 25 U.S.C. 3001 (3)(D), this cultural item also has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between this sacred object/object of cultural patrimony and the Pueblo of Laguna, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with this sacred object/object of cultural patrimony should contact Special Agent Lucinda D. Schroeder, U.S. Fish and Wildlife Service, 4901 Paseo Del Norte, Albuquerque, NM 87113, telephone (505) 828–3064, before August 4, 2003. Repatriation of this sacred object/object of cultural patrimony to the Pueblo of Laguna, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: May 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–16803 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, that meet the definitions of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural items are five wooden figures. Two of the figures are about 6 inches in height and are wrapped together in a cloth. Two of the figures are about 4 inches in height and are also wrapped together in a cloth. The fifth figure is about 18 inches in height and is not wrapped in a cloth.

During 1999 and 2000, the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, participated in an undercover investigation of several individuals believed to be engaged in the illegal trafficking of Native American cultural items. Federal agents purchased or seized several cultural items as part of the investigation. On September 10, 2002, Joshua Baer and Thomas Cavaliere each pled guilty to three counts of illegal trafficking of Native American cultural items obtained in violation of 18 U.S.C. 1170 (b). On January 3 and February 12, 2003, the U.S. District Court for the District of New Mexico ordered that all items seized during the investigation be forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, and repatriated to the culturally affiliated Indian tribes. The wooden figures are five of the items forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, prepared a summary of the cultural items obtained during the investigation. The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also consulted with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.Representatives of the Zuni Tribe of the Zuni Reservation, New Mexico identified the five wooden figures as needed for the practice of traditional Zuni religion by present-day adherents. The tribal representative explained that the five wooden figures are considered the communal property of the Zuni Tribe of the Zuni Reservation, New Mexico and could not have been sold or given away by an individual.

Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the five cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the five cultural items also have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the five sacred objects/objects of cultural patrimony and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Special Agent Lucinda D. Schroeder, U.S. Fish and Wildlife Service, 4901 Paseo Del Norte, Albuquerque, NM 87113, telephone (505) 828–3064, before August 4, 2003. Repatriation of the sacred objects/objects of cultural patrimony to the Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: May 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–16804 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, that meet the definitions of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 20 cultural items are 2 pairs of small painted wooden paddles that are tied together with attached feathers, 2 wooden figures carved in the shape of birds, 1 decorated piece of wood or mongko, 14 stones that are carved in the shape of various animals and contained in leather bags, and 1 flat wooden figurine approximately 8 inches high.

During 1999 and 2000, the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, participated in an undercover investigation of several individuals believed to be engaged in the illegal trafficking of Native American cultural items. Federal agents purchased or seized several cultural items as part of the investigation. On September 10, 2002, Joshua Baer and Thomas Cavaliere each pled guilty to three counts of illegal trafficking of Native American cultural items obtained in violation of 18 U.S.C. 1170 (b). On January 3 and February 12, 2003, the U.S. District Court for the District of New Mexico ordered that all items seized during the investigation be forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, and repatriated to the culturally affiliated Indian tribes. The 20 cultural items are part of the items forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, prepared a summary of the cultural items obtained during the investigation. The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also consulted with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.Representatives of the Hopi Tribe of Arizona identified the 20 cultural items as ceremonial objects needed for the practice of traditional religion. They identified the wooden paddles as needed to safeguard livestock. They identified the two wooden birds as altar figures. They identified the mongko as needed for ceremonies conducted by the Two Horn Society. They identified the 14 carved stones as beings used to treat a variety of ailments. They identified the flat wooden figurine as being worn in a particular religious ceremony. The representatives of the Hopi Tribe of Arizona identified all 20 cultural items as being of central importance to the Hopi Tribe of Arizona and its religious societies. The representatives of the Hopi Tribe of Arizona identified all 20 cultural items as communal property of the pueblo as a whole that could not be sold or given away by an individual.

Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 20 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the 20 cultural items also have ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, rather than property owned by an individual. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the 20 sacred objects/objects of cultural patrimony and the Hopi Tribe of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Special Agent Lucinda D. Schroeder, U.S. Fish and Wildlife Service, 4901 Paseo Del Norte, Albuquerque, NM 87113, telephone (505) 828–3064, before August 4, 2003. Repatriation of the sacred objects/objects of cultural patrimony to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: May 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–16806 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, that meet the definitions of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The seven cultural items are one wooden stick with white paint, several sticks wrapped in a blue cloth, one ceramic bowl, and four anthropomorphic kachina figures.

During 1999 and 2000, the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, participated in an undercover investigation of several individuals believed to be engaged in the illegal trafficking of Native American cultural items. Federal agents purchased or seized several cultural items as part of the investigation. On September 10, 2002, Joshua Baer and Thomas Cavaliere each pled guilty to three counts of illegal trafficking of Native American cultural items obtained in violation of 18 U.S.C. 1170 (b). On January 3 and February 12, 2003, the U.S. District Court for the District of New Mexico ordered that all items seized during the investigation be forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, and repatriated to the culturally affiliated Indian tribes. The seven cultural items are part of the items forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, prepared a summary of the cultural items obtained during the investigation. The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also consulted with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of the Pueblo of Acoma, New Mexico identified the seven cultural items as ceremonial objects needed for the practice of traditional religion. The stick with white paint is needed for the ceremonial rabbit hunt. The sticks wrapped in the blue cloth are prayer sticks removed from an offering site. The ceramic bowl is a medicine bowl used in kiva ceremonies. The four kachina figures are needed for religious practices. The representatives of the Pueblo of Acoma, New Mexico identified all seven cultural items as the communal property of the pueblo as a whole that could not be sold or given away by an individual.

Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the seven cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the seven cultural items also have ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, rather than property owned by an individual. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the seven cultural items and the Pueblo of Acoma, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Special Agent Lucinda D. Schroeder, U.S. Fish and Wildlife Service, 4901 Paseo Del Norte, Albuquerque, NM 87113, telephone (505) 828–3064, before August 4, 2003. Repatriation of the sacred objects/objects of cultural patrimony to the Pueblo of Santo Domingo, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: May 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–16807 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.8 (f), of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, that meet the definitions of sacred objects and cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 13 cultural items are 1 bundle that includes an ear of corn and eagle feathers; 2 cylindrical buffalo hide containers or parfleches; 1 felt bag that contains several smaller leather bags of herbs; 1 beaded leather bag; 1 leather bag containing beads; 1 leather bag; 2 stone anthropomorphic figures; 1 headpiece or tablita, consisting of a painted wooden board; and 3 wooden arrow sticks or hair ties, with migratory bird feathers attached.

During 1999 and 2000, the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, participated in an undercover investigation of several individuals believed to be engaged in the illegal trafficking of Native American cultural items. Federal agents purchased or seized several cultural items as part of the investigation. On September 10, 2002, Joshua Baer and Thomas Cavaliere each pled guilty to three counts of illegal trafficking of Native American cultural items obtained in violation of

18 U.S.C. 1170 (b). On January 3 and February 12, 2003, the U.S. District Court for the District of New Mexico ordered that all items seized during the investigation be forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, and repatriated to the culturally affiliated Indian tribes. The 13 cultural items are part of the items forfeited to the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, prepared a summary of the cultural items obtained during the investigation. The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also consulted with representatives of the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of the Pueblo of Santo Domingo, New Mexico identified the 13 cultural items as ceremonial objects needed for the practice of traditional religion. They considered the bundle with the ear of corn and eagle feathers to be a very sacred object that was not supposed to be removed from the kiva. Similar bundles have been identified in the anthropological literature as corn mothers that are necessary for a variety of sacred, ritual, political, and social purposes. They identified the two buffalo hide parfleches as being needed to hold medicine items used in religious ceremonies. They identified the two anthropomorphic figures as items necessary for religious purposes. They identified the tablita and hair ties as items worn in particular religious ceremonies.

The representatives of the Pueblo of Santo Domingo, New Mexico identified all 13 cultural items as the communal property of the pueblo as a whole that could not be sold or given away by an individual.

Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the 13 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the 13 cultural items also have ongoing historical, traditional, or cultural importance central to a Native American group or culture itself, rather than property owned by an individual. Officials of the U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the 13 sacred objects/objects of cultural patrimony and the Pueblo of Santo Domingo, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects/objects of cultural patrimony should contact Special Agent Lucinda D. Schroeder, U.S. Fish and Wildlife Service, 4901 Paseo Del Norte, Albuquerque, NM 87113, telephone (505) 828–3064, before August 4, 2003. Repatriation of the sacred objects/objects of cultural patrimony to the Pueblo of Santo Domingo, New Mexico may proceed after that date if no additional claimants come forward.

The U.S. Department of the Interior, U.S. Fish and Wildlife Service, Office of Law Enforcement, Albuquerque, NM, is responsible for notifying the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Santo Domingo, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: May 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–16808 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Closure Order Establishing Prohibitions at Ridges Basin, La Plata County, CO

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of closure.

SUMMARY: The Bureau of Reclamation is prohibiting public access and activities on Reclamation land in Ridges Basin, La Plata County, Colorado.

DATES: The closure is effective June 30, 2003, and will remain in effect indefinitely.

ADDRESSES: A map is available for inspection at the Bureau of Reclamation's Western Colorado Area Office located at 835 East Second Avenue, Durango, Colorado. The map may be viewed between 8 a.m. and 4 p.m. Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bill Walsh, Bureau of Reclamation, Western Colorado Area Office, (970) 385–6554, or Doug Hendrix, Bureau of Reclamation, Office of Public Affairs, (801) 524–3837.

SUPPLEMENTARY INFORMATION: This action is being taken under 43 CFR 423.3 to improve facility security and public safety. Reclamation will be prohibiting all public access on Reclamation lands in and around Ridges Basin during construction of the Animas-La Plata Project. This is being done to protect the public from construction activities and to protect the construction workforce from public activities such as discharging weapons. The following acts are prohibited within the Ridges Basin closure area:

(a) Trespassing, entering, or remaining in or upon property or real property not open to the public (closed areas). *Exceptions:* Construction contractor personnel that have authorization from Reclamation, law enforcement and fire department personnel and Reclamation employees acting within the scope of their employment, and any others who have received expressed written authorization from Reclamation to enter the closure area.

(b) Vandalizing, destroying, manipulating, injuring, contaminating, defacing, depositing, abandoning, dumping, damaging, taking, or occupying property and real property of the United States, or other property, not under one's lawful control and possession.

This order is posted in accordance with 43 CFR 423.3(b). Violation of this prohibition or any prohibition listed in 43 CFR 423 is punishable by fine, or imprisonment for not more than 6 months, or both.

Dated: June 23, 2003.

Carol DeAngelis,

Area Manager, Western Colorado Area Office, Bureau of Reclamation—Upper Colorado Region.

[FR Doc. 03–16843 Filed 7–2–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–020]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 11, 2003 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1039–1041 (Preliminary) (Wax and Wax Resin Thermal Transfer Ribbons from France, Japan, Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before July 14, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before July 21, 2003.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 1, 2003.

By order the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–17139 Filed 7–1–03; 3:56 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: revision of currently approved collection; COPS Count Survey.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 78, page 20029 on April 23, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially 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 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 currently approved collection

(2) *Title of the Form/Collection:* COPS Count Survey

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection.* Form: COPS 301/01. Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The COPS Count Project surveys agencies that have been awarded a Hiring and/or MORE grants from the COPS Office. Other: None. The information collected provides an accurate up to date account on the status of officers hired/redeployed. This enables COPS to assess the hiring/redeployment progress of awarded grants. This information is also utilized by the Grant Monitoring Division for pre-site preparing and the Grants Administration Division to further enhance the customer service component of the COPS Office. The Program, Policy Support and Evaluation Division uses this information for evaluation of the programs funded by the COPS Office as well as the development of future programs.

(5) *An estimate of total number of respondents and the amount of time estimated for an average responded to respond:* There will be a total of 11,000 respondents providing information on 17,450 grant awards. There will be 17,000 responses to the hiring survey, at .25 hours per response, for a total of 4,250 hours. There will be 450 responses to the MORE survey, at one hour per response, for a total of 450 hours.

(6) *An estimated of the additional public burden (in hours) associated with the collection:* The total estimated burden on the public is 4,700 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: June 24, 2003.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–16818 Filed 7–2–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review; revision of a currently approved collection; Violent Criminal Apprehension Program (VICAP) Crime Analysis Report.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork

Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

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.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Unit Chief Arthur L. Grovner, Supervisory Special Agent, VICAP, FBI Academy, Quantico, VA 22135.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Violent Criminal Apprehension Program (VICAP) Crime Analysis Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* FD–676. Department of Justice, Federal Bureau of Investigation, Violent Criminal Apprehension Program Unit.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Government. Brief Abstract: Collects data at crime scenes (*e.g.,* unsolved murders or sexual assaults) for analysis by VICAP staff of the FBI. Law enforcement agencies reporting similar pattern crimes will be provided information to initiate a coordinated multi-agency investigation to expedite identification and apprehension of violent criminal offenders (*e.g.,* serial murderers, serial rapists).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 respondents at an average of one hour per response.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 10,000 total burden hours.

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, 601 D Street, Northwest, Washington, DC 20530.

Dated: June 27, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, U.S. Department of Justice.

[FR Doc. 03–16816 Filed 7–2–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review; revision of a currently approved collection; Violent Criminal Apprehension Program (VICAP) Crime Analysis Report.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

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.

Comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Unit Chief Arthur L. Grovner, Supervisory Special Agent, VICAP, FBI Academy, Quantico, VA 22135.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Violent Criminal Apprehension Program (VICAP) Crime Analysis Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* FD–676. Department of Justice, Federal Bureau of Investigation, Violent Criminal Apprehension Program Unit.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local, or Tribal Government. *Brief Abstract:* Collects data at crime scenes (*e.g.,* unsolved murders or sexual assaults) for analysis by VICAP staff of the FBI. Law enforcement agencies reporting similar pattern crimes will be provided information to initiate a coordinated multi-agency investigation to expedite identification and Apprehension of violent criminal offenders (*e.g.,* serial murderers; serial rapists).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 respondents at an average of one hour per response.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 10,000 total burden hours.

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, 601 D Street, Northwest, Washington, DC 20530.

Dated: June 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, U.S. Department of Justice.

[FR Doc. 03–16939 Filed 7–2–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: revision of a currently approved collection: annual survey of jails.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 2, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Todd D. Minton, Statistician, (202) 305–9630, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 collection.

(2) *The title of the Form/Collection:* The Annual Survey of Jails (ASJ).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–5, CJ–5A, CJ–5B, CJ–5B Addendum, and CJ–5C. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* County and City jail authorities and Tribal authorities. This form is the only collection effort that provides an ability to maintain important jail statistics in years between jail censuses. The ASJ enables the Bureau; Federal, State, and local correctional administrators; legislators; researchers; and planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographics and supervision status of jail population and the prevalence of crowding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Nine hundred and forty-six respondents each taking an average of 75 minutes to respond for collection forms CJ–5, CJ–5A, and, CG–5B. Seventy respondents each taking an average of 30 minutes to respond for collection form CJ—5B Addendum. One hundred and twenty respondents each taking an average of 4 hours to respond for collection from CJ–5C.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,698 annual total burden hours associated with the collection.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, U.S. Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, Washington, DC 20503.

Dated: June 27, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–16817 Filed 7–2–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP(OJJDP) Docket No. 1380]

Office of Juvenile Justice and Delinquency Prevention: Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention. This meeting will be open to the public.

DATES: Friday, July 18, 2003, from 10 a.m. to 1 p.m. (ET).

ADDRESSES: The meeting will take place at the U.S. Department of Justice, Office of Justice Programs, Main Conference Room, 3rd Floor, 810 Seventh Street NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Daryel Dunston, Program Manager, Juvenile Justice Resource Center, at: 301–519–6473, or Karen Boston, Administrative Coordinator, Juvenile Justice Resource Center, at: 301–519–5535. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at *ojjdp.ncjrs.org/council/index.html.*

Oral and Written Comments

Requests for the opportunity to present oral comments during the meeting must be made in writing, and received no later than 12 noon (ET), on Friday, July 11, 2003. Requests should be sent to Marilyn Roberts, Designated

Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, by fax at: 202–307–2093, or by e-mail, at: *robertsm@ojp.usdoj.gov.* In general, each individual or group making an oral presentation will be limited to a total time of 10 minutes.

Written comments may be submitted to the Office of Juvenile Justice and Delinquency Prevention, by fax at: 202–307–2093, or by e-mail at: *robertsm@ojp.usdoj.gov.*

The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Members of the public who wish to attend the meeting should notify the Juvenile Justice Resource Center at 301–519–6473 (Daryel Dunston) or at 301–519–6473 (Karen Boston), by 5 p.m., ET, on Friday, July 11, 2003. [These are not toll-free numbers.] To register for the meeting online, go to *ojjdp.ncjrs.org/council/meetings.html.*

Note: For security purposes, photo identification will be required for admission to the meeting.

Dated: June 17, 2003.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 03–16917 Filed 7–2–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 26, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or E-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and 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.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of a currently approved collection.

Title: Notice of Enrollment Rights.

OMB Number: 1210–0101.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Third party disclosure.

Number of Respondents: 2,600,000.

Number of Annual Responses: 9,602,000.

Total Estimated Burden Hours: 7,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $841,000.

Description: Section 734 of the Employee Retirement Income Security Act of 1974 (ERISA), added by the Health Care Portability and Accountability Act of 1996 (HIPAA), authorized the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules Implementing the Portability Requirement for Group Health Plan were published on April 8, 1997, (62 FR 16920) (April 8 Interim Rules).

In order to improve participants' understanding of their rights under an employer's group health plan, HIPAA requires that a participant be provided with a description of a plan's special enrollment rules on or before the time that a participant is offered the opportunity to enroll in a group health plan. These special enrollment rules generally apply to circumstances in which the participant initially declined to enroll in a plan, and later wishes to enroll.

The April 8 Interim Rules offer a model form to be used by group health plans and health insurance issuers that includes the minimum elements of information mandated by the statute. The ICR implements the disclosure requirements of HIPAA related to special enrollment rights.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of a currently approved collection.

Title: Notice of Pre-Existing Condition Exclusion under ERISA.

OMB Number: 1210–0102.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Third party disclosure.

Number of Respondents: 1,300,000.

Number of Annual Responses: 8,570,000.

Total Estimated Burden Hours: 9,004.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,088,359.

Description: Section 734 of the Employee Retirement Income Security Act of 1974 (ERISA), added by the Health Care Portability and Accountability Act of 1996 (HIPAA) authorized the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997, (62 FR 16920) (April 8 Interim Rules).

Under the April 8 Interim Rules, a group health plan or health insurance issuer may not impose any pre-existing conditions exclusion on a participant unless that participant has been notified in writing that the plan includes pre-existing condition exclusion provisions, that a participant has a right to demonstrate any periods for prior creditable coverage, and that the plan or issuer will assist the participant in

obtaining a certificate of prior coverage from any prior plan or issuer, if necessary. In addition, the April 8 Interim Rules require that before a plan or issuer imposes a pre-existing condition exclusion on a particular participant, it must first disclose that determination in writing, including the basis of the decision, and an explanation of any appeal procedure established by the plan or issuer. Specific disclosure requirements relating to pre-existing exclusions constitute the ICR.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of a currently approved collection.

Title: Establishing Creditable Coverage.

OMB Number: 1210–0103.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Frequency: On occasion.

Type of Response: Third party disclosure.

Number of Respondents: 2,600,000.

Number of Annual Responses: 44,396,000.

Total Estimated Burden Hours: 351,150.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $34,689,450.

Description: Section 734 of the Employee Retirement Income Security Act of 1974 (ERISA), added by the Health Care Portability and Accountability Act of 1996 (HIPAA) authorized the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Section 701(e)(3) requires that the Secretary of Labor issue rules to prevent any entity's failure to provide and individual with a certification of prior health coverage, or certain other required disclosures, from adversely affecting the individual's subsequent health coverage.

On April 8, 1997 (67 FR 16894), the Department issues Interim Final Rules, requiring a group health plan to provide a written certificate suitable for establishing the prior creditable coverage of a participant or beneficiary. The April 8 Interim Final Rules offer model certification and notice forms, containing the minimum information mandated by the statute, to be used by group health plans and health insurance issuers. This ICR covers the provision of materials sufficient to establish prior creditable coverage.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–16873 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,378]

American Quality Ceramics, Tempo Lighting, Inc., Bangs, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 23, 2003, applicable to workers of American Quality Ceramics, Bangs, Texas. The notice was published in the **Federal Register** on May 7, 2003 (68 FR 24504).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of collectible plates and mugs.

New information shows that Tempo Lighting, Inc. is the parent firm of American Quality Ceramics. Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Tempo Lighting, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of American Quality Ceramics, Bangs who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,378 is hereby issued as follows:

''All workers of American Quality Ceramics, Tempo Lighting, Inc., Bangs, Texas, who became totally or partially separated from employment on or after March 31, 2002, through April 23, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of June 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16900 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,598]

Blandin Paper Co. Including Temporary Workers of Search Resources, AMS Staff Leasing, Applied Management, Grand Rapids MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 2003, applicable to workers of Blandin Paper Company, Grand Rapids, Minnesota. The notice was published in the **Federal Register** on March 10, 2003 (68 FR 11410).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that temporary workers of Search Resources, AMS Staff Leasing and Applied Management were employed at Blandin Paper Company to produce coated magazine paper at the Grand Rapids, Minnesota location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Search Resources, AMS Staff Leasing and Applied Management, Grand Rapids, Minnesota employed at Blandin Paper Company, Grand Rapids, Minnesota.

The intent of the Department's certification is to include all workers of Blandin Paper who were adversely affected by the shift in production to Canada and Finland.

The amended notice applicable to TA–W–50,598 is hereby issued as follows:

All workers of Blandin Paper, Grand Rapids, Minnesota including temporary workers of Search Resources, AMS Staff Leasing and Applied Management, Grand Rapids, Minnesota engaged in employment related to the production of coated magazine paper at Blandin Paper Company, Grand Rapids, Minnesota, who became totally or partially separated from employment on or

after January 17, 2002, through February 13, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of June 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16902 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of June 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None.

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–51,106; Certainteed Corp., Nesquehoning, PA

TA–W–51,660; Leonard Kunkin Associates, Inc., Souderton, PA

TA–W–51,752; Bay Machinery Co., Blissfield, MI

TA–W–51,525 & A; West Branch Industries, West Branch, MI and Tawas Tool Co., East Tawas, MI

TA–W–51,453; Jersey Shore Steel Co., Jersey Shore, PA

TA–W–51,194; Weyerhaeuser Co., Plymouth, NC

TA–W–51,113; Toppan Electronics, Inc., including leased workers of Manpower, Inc., and Payrolling.Com, a subsidiary of Toppan Printing, Ltd, San Diego, CA

TA–W–51,977; Fishing Vessel (F/V) Vicki Rae, San Point, AK

TA–W–51,968; International Uranium (USA) Corp., a subsidiary of International Uranium Corp., White Mesa Mill, Blanding, UT

TA–W–51,871; Citation Corp., Camden, TN

TA–W–51,762; Ingersoll Milling Machine Co., a div. of Ingersoll Iynternational, Inc., Rockford, IL

TA–W–51,751; McMillen Lumber, Sheffield, PA

TA–W–51,728; Inland Paperboard and Packaging, Inc., Elizabethton, TN

TA–W–51,723; Fishing Vessel (F/V) Sylvia Star, Kodiak, AK

TA–W–51,317; Tetley USA, Inc., Williamsport, PA

TA–W–50,924; Shaw Alloy Piping Products, Inc., Shreveport, LA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–51,913; Metz & Associates, Ltd, Dallas, PA

TA–W–50,781; MSX International Engineering Services, Inc., a subsidiary of MSX International, Inc., CollaborativeEngineering Management Services Div., Auburn Hills, MI

TA–W–51,748; Intel Corp., Enterprise Products Group, Enterprise Platforms and Services Div., Test Development Engineering, Hillsboro, OR

TA–W–51,679; Progress Lighting, Inc., Philadelphia Distribution Center, Philadelphia, PA

TA–W–51,293; 4B's Restaurants, Inc., Libby, MT

TA–W–51,610; Asyst Technologies, Inc., Williston, VT

TA–W–51,978; Atlas Cold Storage Midwest Ltd, Green Bay, WI

TA–W–51,974; ICT Group, Christianburg, VA

TA–W–51,924; Spectrum Contact Services, d/b/a Spectrum Integrated Services, a subsidiary of Level 3 Communications, Liberty Lake, WA

TA–W–51,919; Chevron '' Texaco, Customer Service Department, Concord, CA

TA–W–51,834; Agilent Technologies, Inc., Information Technology Div. (IT), Colorado Springs, CO

TA–W–51,892; International Women's Apparel, Inc., a subsidiary of Hartmarx Corp., Easton, PA

TA–W–51,822; Citimortgage, Inc., Farmington Hills, MI

TA–W–51,742; Entronix International, Inc., Plymouth, MN

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–51,845; Fishing Vessel (F/V) Dusty, Pelican, AK

TA–W–51,980; Decibel Products, Dallas, TX

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (II.B) (has shifted production to a county not under the free trade agreement with the U.S) have not been met.

TA–W–51,861; Rosewood Manufacturing Co., a div. of Blauer Manufacturing Co., Inc., Charleston, MS

TA–W–51,195; Rittman Paperboard, a div. of Caraustar Mill Group, Inc., Rittman, OH

TA–W–52,000; Fishing Vessel (F/V) Night Hawk, Warrenton, OR

TA–W–51,971; Fulton Bellows and Components, Knoxville, TN

The investigation revealed that criteria (a) (2) (A) (I.C) (increased imports) and (a)(2)(B) (II.C) (has shifted production to country not under the free trade agreement with U.S) have not been met.

TA–W–51,458; Silicon Graphics, Inc., Worldwide Manufacturing Organization, including leased workers of Kelly Services, Chippewa Falls, WI

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,638; Keystone Powdered Metal Co., St. Mary's, PA

TA–W–51,844; Fishing Vessel (F/V) Kindred Spirit, Hoonah, AK

Affirmative Determinations for Worker Adjustment Assistnace

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,820; Orion America, Inc., Olney, IL: May 19, 2002.

TA–W–51,934; Darwood Manufacturing Co., Pelham, GA: May 30, 2002.

TA–W–51,938; The Eureka Co., El Paso, TX: May 9, 2003.

TA–W–51,941; Midland Steel Products Co., Solon, OH: May 19, 2002.

TA–W–51,738; Motor Components, LLC, (formerly known as Purolator Products), Elmira, NY: May 22, 2003.

TA–W–51,629; Ridgeway Clocks, Ridgeway, VA: April 28, 2002.

TA–W–51,621 & A; Stora Enso North America, Wisconsin Rapids Paper Mill, Wisconsin Rapids, WI and Biron Paper Mill, Biron, WI: March 13, 2003.

TA–W–51,608; Precision Components Corp., York, PA: April 25, 2002.

TA–W–51,543; Rexnord Industries, Inc., Industrial Chain and Conveyor North America Div., Morganton, NC: April 21, 2002.

TA–W–51,486; Meadwestvaco Corp., Envelope Packaging Group, A C.O.P.G. Div., Springfield, MA: April 10, 2002.

TA–W–51,669; Shinei USA, Inc., a wholly owned subsidiary of Shinei International, a wholly owned subsidiary of Solectron Corp., including leased workers of Kelly Service, Hillsboro, OR: January 2, 2002.

TA–W–51,808; West Point Stevens, Inc., Roanoke Rapids, NC: June 30, 2003.

TA–W–51,801; Solid State Securities, In., a div. of Chamberlain Group, Inc., Hazleton, PA: May 13, 2002.

TA–W–51,769; Hamilton Die Cast, Inc., Hamilton, OH: December 19, 2001.

TA–W–51,706; Midland Steel Products Co., Cleveland, OH: April 30, 2002.

TA–W–51,667; American Candy Co., Selma, AL: April 11, 2002.

TA–W–51,645; Koch Nitrogen Co., Sterlington, LA: April 21, 2002.

TA–W–51,641; TMD Friction, Inc. Liner and Block Div., including leased workers of Southern Employment Agency, Inc., Dublin, VA: April 29, 2002.

TA–W–51,619; Sterling and Adams Bentwood, Inc., Lenoir, NC: April 25, 2002.

TA–W–51,553; Arvin Meritor, Loudon, TN: April 9, 2002.

TA–W–51,485 & A; Bloomsburg Mills, Inc., New York, NY and Monroe, NC: March 31, 2002.

TA–W–51,421; Modern Mold & Tool Manufacturing, Inc., Magnus Molding Div., Pittsfield, MA: March 19, 2002.

TA–W–51,373; Buckbee-Mears Group, BMC Mask Operations, a Unit of BMC Industries, Inc., Cortland, NY: March 31, 2002.

TA–W–51,074; Elliott Turmomachinery Co., Inc., Jeanette, PA: February 21, 2002.

TA–W–51,930; Richards Industries, Inc., Valve Group, Frenchburg, KY: May 27, 2002.

TA–W–51,813; S.D. Warren Co. d/b/a Sappi Fine Paper North America, Westbrook, ME: May 12, 2002.

TA–W–51,574; Gator Industries, Inc., Hialeah, FL: April 11, 2002.

TA–W–51,565; Thyssenkrupp Budd Co., Boby Division, Philadelphia, PA: April 22, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–51,821; Moen, Inc., Wheeling, IL: May 19, 2002.

TA–W–51,833; Ever Corp., Newport, AR: May 20, 2002.

TA–W–51,836; Advanced Energy Industries, Core Manufacturing, Fort Collins, CO: May 13, 2002.

TA–W–51,878; Ark-Les Electronic Products Corp., a wholly-owned subsidiary of Ark-Les Corp., Gloucester, MA: May 12, 2002.

TA–W–51,917 & A, B; Liberty Embroidery Wentworth Corp., Embroidery Div., Madison, NC, Packaging Div., Madison, NC and Screen Print Div., Madison, NC: May 19, 2002.

TA–W–51,993; Cummins, Power Generation Unit, including leased workers of Firstsite Staffing, Fridley, MN: June 4, 2002.

TA–W–51,694; Component Concepts, Inc., Thomasville, NC: May 6, 2002.

TA–W–51,805; Plexus Electronic Assembly, a div. of Plexus Corp., Richmond, KY: May 7, 2002.

TA–W–51,692; Dana Corp., including leased workers of Staff-Co Temporary and Manpower Temporary, Pelahatchie, MS: May 6, 2002.

TA–W–51,716; FCI Automotive Div., Brecksville, OH: April 27, 2002.

TA–W–51,693; International Comfort Products Corp. (USA), Fast Parts, Lavergne, TN: April 25, 2002.

TA–W–51,554; Greensboro Apparel, Inc., Greensboro, AL: April 21, 2002.

TA–W–51,507; Perkin Elmer Life and Analytical Sciences, Norton, OH: March 15, 2002.

TA–W–51,868; Apparel Cutting, Inc., Medley, FL: May 17, 2002.

TA–W–51,885; Tyco Healthcare/ Mallinekrodt, Lafayette Pharmaceuticals, Inc., Lafayette, IN: May 27, 2002.

TA–W–51,589; Oxford Wire and Cable Services, Inc., Oxford, MS: April 17, 2002.

TA–W–51,437; NTN-BCA Corp., a subsidiary of NTN USA, Lititz, PA: March 31, 2002.

TA–W–51,519; Bronze Craft Corp., Nashua, NH: April 11, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–51,831; State of Alaska Commercial Fisheries Entry Commission Permit #S04K649372, Kodiak, AK: May 15, 2002.

TA–W–51,927; Sound Fish, Inc., Fishing Vessel (F/V) New York, Hoonah, AK: June 2, 2002.

TA–W–51,943; Fishing Vessel (F/V) Carolina, Wasilla, AK: June 2, 2002.

I hereby certify that the aforementioned determinations were issued during the months of June 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 20, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–16907 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,355]

Culp, Inc., Rossville Division, Chattanooga, TN; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked May 20, 2003, three workers requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to

apply for Trade Adjustment Assistance (TAA). The denial notice was signed on April 28, 2003 and published in the **Federal Register** on May 9, 2003 (68 FR 25060).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Culp, Inc., Rossville Division, Chattanooga, Tennessee engaged in the production of upholstery fabrics, was denied because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of competitive products in 2000 through October 2002. The respondents reported no increased imports. The subject firm did not increase its reliance on imports of upholstery fabrics during the relevant period, nor did it shift production to a foreign source.

The workers allege that production has been shifted to China.

A company official was contacted in regard to this allegation. As a result, it was revealed that the company will be opening a foreign ''finishing'' plant for upholstery products in November of 2003. This information has no bearing on a revised consideration for subject firm workers because (a) the weaving that was done at the Chatanooga facility is not competitive with the finishing that will be done at the foreign facility, and (b), the November start date for production at the foreign facility is outside the relevant period for this investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16896 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,854]

Factory Services, inc., Mineola, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 22, 2003, in response to a worker petition filed by a company official on behalf of workers at Factory Services, Inc., Mineola, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 20th day of June 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16912 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR
Employment and Training Administration

[TA–W–51,839]

GE Transportation Systems Global Signaling, Circuit Board Division, Warrensburg, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 21, 2003, in response to a worker petition filed by the State of Missouri Division of Workforce Development, on behalf of workers at GE Transportation Systems Global Signaling, Circuit Board Division, Warrensburg, Missouri. The petitioning group of workers is covered by an active certification issued on September 26, 2002 and which remains in effect (TA–W–40,621). Consequently, further investigation in this case would serve no purpose, and the investigation may be terminated.

Signed in Washington, DC, this 25th day of June 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16908 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,335]

General Electric Industrial Systems, Drives & Controls, Inc., Salem, VA; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 9, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of General Electric Industrial Systems, Drives and Controls, Inc., Salem, Virginia was signed on April 24, 2003, and published in the **Federal Register** on May 9, 2003 (68 FR 25060).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at General Electric Industrial Systems, Drives and Controls, Inc., Salem, Virginia engaged in activities related to ''editing and formatting'' of customer instruction manuals. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that the Department did not correctly assess the worker group functions, that in addition to editing and formatting, workers also ''create, develop and publish'' customer instruction manuals. The petitioner emphasizes that the operating instructions contained in these manuals are essential to the operation of the products they accompany in the retail

market and is unclear as to why ''publications'' should not be considered ''articles'' as described in section 222 of the Trade Act.

Review of the initial investigation reveals that a company official stated that content writing and editing was performed at the subject facility, and that this work function was shifted to a foreign GE affiliate. However, the writing performed is sent back to the Salem, Virginia facility via electronic copy in order to be printed and published. Informational material that is electronically transmitted is not considered production within the context of TAA eligibility requirements, so there are no imports of products in this instance. Further, as the manual does not become a product until it is printed, petitioning workers did not produce an ''article'' within the meaning of the Trade Act of 1974.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16895 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,084]

Gilinsky Logging, Inc., Rogue River, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 5, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on March 27, 2003 and published in the **Federal Register** on April 11, 2003 (68 FR 17831).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Gilinsky Logging, Inc., Rogue River, Oregon engaged in the production of logs, was denied because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customer regarding its purchases of competitive products in 2001 and 2002. The respondent reported no increased imports. The subject firm did not import logs during the relevant period, nor did it shift production to a foreign source.

The petitioner states that the impact of Canadian lumber was not taken into account in the original investigation regarding layoffs at the subject firm. To support this allegation, he states that the Department should have looked at the ''last fifteen years'' of contracts for the subject firm, rather than just the major declining customer surveyed for periods in 2001 and 2002.

The fifteen year time period mentioned by the petitioner far exceeds the relevant period of TAA investigations, which is four quarters (or one year) preceding the petition date compared with a representative base period. Additionally lumber is not competitive with logs, and thus lumber data is irrelevant to establishing import impact in connection with TAA eligibility for this worker group.

The petitioner further provides a list of NAFTA–TAA certified facilities that were customers of the subject firm, implying that the subject firm may be eligible for secondary upstream supplier certification.

For certification on the basis of secondary upstream supplier, the secondary firm must supply at least 20 percent of its production or sales to a manufacturer whose workers were certified eligible to apply for adjustment assistance currently under certification for Trade Adjustment Assistance or NAFTA–TAA or the company must supply component parts to the primary firm and a loss of business with this manufacturer contributed importantly to the workers separation or threat of separation. Of the six trade certified firms listed by the petitioner, four of the certifications had expired at the time of the petition for Gilinsky Logging. The remaining two firms (Louisiana Pacific Corporation, Rogue River, Oregon, NAFTA–5001, and Roseburg Sawmill, Roseburg, Oregon, NAFTA–4988) were under existing certifications at the time of the petition signing. However, collectively, these two customers constituted a very small portion of subject firm business. The initial investigation revealed the layoff occurred as a result of declines in business to a customer who represented the overwhelming majority of business in the relevant period.

Finally, the petitioner alleges that about one-third of U.S. consumption of softwood lumber comes from Canada, and that this alleged fact should be used to verify import eligibility requirements for TAA.

In assessing import impact, the Department considers import trends of like or directly competitive products to determine import impact in the relevant period, thus stagnant figures indicating foreign production for U.S. consumption of softwood lumber are not relevant to this investigation regarding workers producing logs.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16905 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,409 and TA–W–50,409A]

International Comfort Products Corp. (USA), a Wholly Owned Subsidiary of United Technologies Corp., and an Affiliate of Carrier Corp., Lewisburg, TN, ICP Warehouse, Lewisburg, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 3, 2003, applicable to workers of International Comfort Products Corp. (USA), a wholly owned subsidiary of United Technologies Corp. and an affiliate of Carrier Corp., Lewisburg, Tennessee. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8620).

At the request of the Boilermakers Union, Local 52, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of heating, ventilation, and air-conditioning equipment.

Information shows that worker separations occurred at the ICP Warehouse, Lewisburg, Tennessee location of the subject firm. The ICP Warehouse provides warehousing and shipping services for the subject firm.

Accordingly, the Department is amending the certification to include workers of the ICP Warehouse, Lewisburg, Tennessee.

The intent of the Department's certification is to include all workers of International Comfort Products Corp. (USA), a wholly owned subsidiary of United Technologies Corp., and an affiliate of Carrier Corp. adversely affected by increased imports.

The amended notice applicable to TA–W–50,409 is hereby issued as follows:

All workers of International Comfort Products Corp. (USA), a wholly owned subsidiary of United Technologies Corp. and an affiliate of Carrier Corp., Lewisburg, Tennessee (TA–W–50,409), and ICP Warehouse, Lewisburg, Tennessee (TA–W–50,409A), who became totally or partially separated from employment on or after December 5, 2001, through February 3, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of May, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16898 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 14, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 14, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 18th day of June 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 06/10/2003 and 06/13/2003.]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,976	John Schandelmeier (Comp)	Paxson, AK	06/10/2003	05/31/2003
51,977	Fishing Vessel (F/V) Vickie Rae (Comp)	Sand Point, AK	06/10/2003	06/05/2003
51,978	Atlas Cold Storage Midwest Ltd. (Comp)	Green Bay, WI	06/10/2003	06/04/2003
51,979	Oh, Baby Enterprise, Ltd. (Wkrs)	New York, NY	06/10/2003	06/03/2003
51,980	Decibel Products (Wkrs)	Dallas, TX	06/10/2003	03/28/2003
51,981	Emerson Climate Technologies Flow (IAM)	St. Louis, MO	06/10/2003	06/05/2003
51,982	General Mills (Comp)	Hillsdale, MI	06/10/2003	06/04/2003
51,983	Smurfit-Stone Container (Wkrs)	El Paso, TX	06/10/2003	05/22/2003
51,984	Martinrea Industries, Inc. (Comp)	Machester, MI	06/10/2003	06/09/2003
51,985	U.S. Castings (Comp)	Anniston, AL	06/10/2003	06/02/2003
51,986	Amyx Industries (Comp)	West Plains, MO	06/10/2003	06/02/2003
51,987	EGS Electrical Group (Wkrs)	Columbus, NE	06/10/2003	06/06/2003
51,988	Vishay-North American Capacitor Co. (Comp)	Greencastle, IN	06/10/2003	06/06/2003
51,989	Coates Screen Inc. (UNITE)	E. Rutherford, NJ	06/10/2003	05/30/2003
51,990	Waterfront Sportswear, Inc. (Comp)	Fall River, MA	06/10/2003	06/05/2003
51,991	Gateway Hosiery (Comp)	N. Wilkesboro, NC	06/10/2003	06/04/2003
51,992	American Standard, Inc. (Comp)	Paintsville, KY	06/10/2003	06/06/2003
51,993	Cummins (Comp)	Fridley, MN	06/10/2003	06/04/2003
51,994	Jakel, Inc. (Wkrs)	Clinton, KY	06/10/2003	06/03/2003

APPENDIX—Continued

[Petitions instituted between 06/10/2003 and 06/13/2003.]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,995	Occidental Chemical Corporation (Wkrs)	Castle Hayne, NC	06/10/2003	05/31/2003
51,996	Borden Chemical, Inc. (Comp)	Mt. Jewett, PA	06/10/2003	06/06/2003
51,997	A. Schulman, Inc. (PACE)	Orange, TX	06/10/2003	06/02/2003
51,998	Ameripol Synpol Corp. (PACE)	Port Neches, TX	06/10/2003	06/02/2003
51,999	Thunderbird Mining Co. (Comp)	Eveleth, MN	06/10/2003	06/05/2003
52,000	Fishing Vessel (F/V) Night Hawk (Comp)	Warrenton, NH	06/11/2003	06/07/2003
52,001	Risdon AMS	Laconia, NH	06/11/2003	06/10/2003
52,002	Allister Fabricating, Iinc. (Comp)	Lannon, WI	06/11/2003	06/10/2003
52,003	Menlo Worldwide Logistics (Comp)	Edisoin, NJ	06/11/2003	05/30/2003
52,004	Golden Casting (GMP)	Columbus, IN	06/11/2003	05/22/2003
52,005	Reliability, Inc. (VT)	Benson, VT	06/11/2003	06/04/2003
52,006	America Online (Wkrs)	Oklahoma City, OK	06/11/2003	06/03/2003
52,007	American London Norwood (Comp)	Norwood, MA	06/11/2003	05/29/2003
52,008	Epic (Wkrs)	Norwalk, OH	06/11/2003	05/16/2003
52,009	AGFA Corporation (Wkrs)	Newark, DE	06/11/2003	05/28/2003
52,010	Imperial of Morristown, Inc. (Comp)	Morristown, TN	06/11/2003	06/05/2003
52,011	F/V Nanesse (Comp)	Skagway, AK	06/12/2003	06/11/2003
52,012	Mark Lemon (Comp)	Kasilof, AK	06/12/2003	06/06/2003
52,013	Shipley Company LLC (Comp)	Spartanburg, SC	06/12/2003	05/29/2003
52,014	Robert Bosch Corp. (UAW)	Kentwood, MI	06/12/2003	06/10/2003
52,015	Baxter Healthcare (AR)	Mt. Home, AR	06/12/2003	06/10/2003
52,016	Trio Dyeing and Finishing (UNITE)	Paterson, NJ	06/12/2003	05/20/2003
52,017	Bush Industries (Wrks)	St. Paul, VA	06/12/2003	06/01/2003
52,018	ICT (Wkrs)	Lewiston, ME	06/12/2003	06/02/2003
52,019	Actronix, Incl. (AR)	Flippin, AR	06/12/2003	06/10/2003
52,020	Dura Automotive Systems, Inc. (Comp)	Fulton, KY	06/12/2003	06/04/2003
52,021	Eagle Ottawa LLC (Comp)	Rochester Hills, MI	06/12/2003	05/16/2003
52,022	Nortel Networks (Wkrs)	RTP, NC	06/12/2003	05/06/2003
52,023	Trevorton Manufacturing, Inc. (Comp)	Trevorton, PA	06/12/2003	06/02/2003
52,024	Stitches, Inc. (Comp)	Sunbury, PA	06/12/2003	06/02/2003
52,025	Dynamco (Comp)	McKinney, TX	06/12/2003	06/11/2003
52,026	Neff Motivation, Inc. (Comp)	Greenvile, OH	06/13/2003	06/12/2003
52,027	ADC Telecommunications, Inc. (Wkrs)	New Hope, MN	06/13/2003	05/13/2003
52,028	Eaton Corporation (Comp)	Brooksville, FL	06/13/2003	06/13/2003
52,029	Medway Plastics Corporation (CA)	Long Beach, CA	06/13/2003	05/14/2003
52,030	Plassein International (Comp)	Martin, MI	06/13/2003	06/06/2003
52,031	Swing-N-Slide (Comp)	Janesville, WI	06/13/2003	06/13/2003
52,032	Precision Interconnect (Comp)	Broomfield, CO	06/13/2003	06/12/2003
52,033	Images 2, Inc. (Comp)	Lexington, AL	06/13/2003	05/23/2003
52,034	Lion Bioscience (Wkrs)	Cleveland, OH	06/13/2003	06/11/2003
52,035	Ingram Micro, Inc. (NY)	Williamsville, NY	06/13/2003	05/19/2003
52,036	WiCat Systems, Inc. (UT)	Lindon, UT	06/13/2003	06/11/2003

[FR Doc. 03–16872 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,745]

Marion Plywood Corp., Marion, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 14, 2003 in response to a petition filed by a company official on behalf of workers at Marion Plywood, Marion, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of June, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16916 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,324]

Maverick Tube Corp., Beaver Falls, PA; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT), on May 6, 2003, granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determination in *Former Employees of Maverick Tube Corp.* v. *U.S. Secretary of Labor* (Court No. 02–00185).

The Department's initial denial of the petition for employees of Maverick Tube Corporation, Beaver Falls, Pennsylvania was issued on December 31, 2001 and

published in the **Federal Register** on January 11, 2002 (67 FR 1510). The investigation revealed that criterion (3) was not met. The Department conducted a survey of the major declining customers of Maverick Tube Corp., regarding their purchases of cold drawn tubular products for 1999, 2000 and January through March 2001. The results of the survey indicated that customer import purchases of cold drawn tubular product declined during the relevant period.

On remand, the Department conducted a survey of additional customers not supplied during the initial investigation. The survey revealed that customers increased their reliance on imported cold drawn tubular products during the relevant period.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with cold drawn tubular products produced at Maverick Tube Corporation, Beaver Falls, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm.

In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Maverick Tube Corporation, Beaver Falls, Pennsylvania who became totally or partially separated from employment on or after May 11, 2000, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of June 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16903 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,783 and TA–W–51,783A]

Nabco, Inc., A Delco Remy International Company, Marion, MI; Nabco, Inc., A Delco Remy International Company, Kaleva, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 16, 2003 in response to a worker petition filed by a company official on behalf of workers at NABCO, Inc., A Delco Remy International Company, Marion, Michigan (TA–W–51,783) and NABCO, Inc., A Delco Remy International Company, Kaleva, Michigan (TA–W–51,783A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 19th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16913 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,078]

Plastene Supply Co., Plant 1, Division of Siegel Robert, Inc., Portageville, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 18, 2003 in response to a worker petition filed on behalf of workers at Plastene Supply Co., Plant 1, Division of Siegel Robert, Inc., Portageville, Missouri.

The investigation revealed that petition (TA–W–52,078) is a duplicate petition of (TA–W–51,652) instituted on April 30, 2003. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16910 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,487 and TA–W–51,487A]

R.A.G.S., Inc., Selective HR Solutions V, Inc., Lexington, NC and R.A.G.S., Inc., Selective HR Solutions V, Inc., Richfield, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 29, 2003, applicable to workers of R.A.G.S., Inc., Lexington, North Carolina and Richfield, North Carolina. The notice was published in the **Federal Register** on May 9, 2003 (68 FR 25061).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

Information provided by the State shows that workers of R.A.G.S., Inc. were leased workers of Selective HR Solutions V, Inc. to produce ladies' jackets at the Lexington, North Carolina location of the subject firm. Leased workers of Selective HR Solutions V, Inc. were also employed at the subject firm's Richfield, North Carolina location of the subject firm to cut the material that was used to produce jackets at the Lexington, North Carolina location.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Selective HR Solutions V, Inc.

Accordingly, the Department is amending the certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of R.A.G.S., Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,487 and TA–W–51,487A are hereby issued as follows:

All workers of R.A.G.S., Inc., Selective HR Solutions V, Inc., Lexington, North Carolina (TA–W–51,487) and R.A.G.S., Inc., Selective HR Solutions V, Inc., Richfield, North Carolina (TA–W–51,487A), who became totally or partially separated from employment on or after April 11, 2002, through April 29, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of June 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16899 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,429, et al.]

Roseburg Forest Products Headquartered in Dillard, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 2, 2003, applicable to workers of Roseburg Forest Products, Headquartered in Dillard, Oregon. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of plywood.

New findings show that worker separations occurred at the Machine Shop and the Wood Department of Roseburg Forest Products, Dillard, Oregon. Workers at the Machine Shop build and tool equipment for the saw mills and plywood Departments of the subject firm. Workers at the Wood Department provide logs to the many plywood Departments of the subject firm.

Accordingly, the Department is amending the certification to include workers at the Machine Shop and the Wood Department at Roseburg Forest Products and to correct the city location of the Plywood Division, Plant 3 to read Roseburg, Oregon.

The intent of the Department's certification is to include all workers of Roseburg Forest Products who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,429 is hereby issued as follows:

All workers of Roseburg Forest Products, Headquartered in Dillard, Oregon (TA–W–51,429), Plywood Division—Plants 1 & 2, Dillard, Oregon (TA–W–51,429A), Plywood Division—Plant 3, Roseburg, Oregon (TA–W–51,429B), Plywood Division—Plant 4, Riddle, Oregon (TA–W–51,429C), Plywood Division—Plant 6, Coquille, Oregon (TA–W–51,429D), Plywood Division—Plant 7, Weed, California (TA–W–51,429E), Machine Shop, Dillard, Oregon (TA–W–51,429F), and Wood Department, Dillard, Oregon (TA–W–51,429G), who became totally or partially separated from employment on or after April 2, 2002, through June 2, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 20th day of June 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16906 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,340]

Sprint United Management Co., Rosemont Center, Rosemont, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 20, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Sprint United Management Company, Rosemont Center, Rosemont, Illinois was signed on April 9, 2003, and published in the **Federal Register** on April 24, 2003 (68 FR 20177).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Sprint United Management Company, Rosemont Center, Rosemont, Illinois engaged in selling long distance services. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

In the request for reconsideration, the petitioners state that the Department erred in describing worker activities as ''selling long distance services''. As clarification, they stated that they worked for ''Sprint Long Distance Collections Dept.''

In order to meet eligibility requirements, the petitioning worker group must be engaged in production; collection services do not constitute production within the meaning of Section 222(3) of the Trade Act.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16904 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,564]

Stoneridge, Inc., Alphabet Division, Mebane, NC, Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 23, 2003 in response to a union petition filed by a company official on behalf of workers at Stoneridge, Inc., Alphabet Division, Mebane, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of June, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16915 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,876]

Straits Steel and Wire Co., Ludington, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, and investigation was initiated on May 28, 2003 in response to a worker petition filed by a company official on behalf of workers at Straits Steel and Wire Company, Ludington, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16911 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,127]

Swag-Nit, Inc, Mt. Holly, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 24, 2003, in response to a worker petition filed by a company official on behalf of workers at Swag-Nit, Inc., Mt. Holly, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of June 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16909 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,828]

Texas Instruments, Inc., Leadframe, Sensors and Controls Divisions, Attleboro, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 20, 2003 in response to a petition filed a company official on behalf of workers at Texas Instruments, Leadframe Division, and Sensors and Controls Division, Attleboro, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of June, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16914 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,834 and TA–W–50,834A]

TSI Graphics, Inc., Effingham, IL, and Including an Employee of TSI Graphics, Inc., Located in New Port Richey, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 8, 2003, applicable to workers of TSI Graphics, Inc., Effingham, Illinois. The notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving an employee of the Effingham, Illinois facility of TSI Graphics, Inc., located in Port Richey, Florida. This employee was engaged in the production of textbook color work/graphics as disk-to-plate files.

Based on these findings, the Department is amending this certification to include an employee of the Effingham, Illinois facility of TSI Graphics, Inc., located in New Port Richey, Florida.

The intent of the Department's certification is to include all workers of TSI Graphics, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,834 is hereby issued as follows:

All workers of TSI Graphics, Inc., Effingham Illinois (TA–W–50,834), including an employee of TSI Graphics, Inc., Effingham, Illinois, located in New Port Richey, Florida (TA–W–50,834A), who became totally or partially separated from employment on or after February 5, 2002, through April 8, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of June 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16901 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05755]

Delphi Automotive Systems Corp., Delphi Delco Electronics Division, Body and Security Team, Oak Creek, WI; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT), on March 26, 2003, granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determination in *Former Employees of Delphi Automotive Systems Corp.* v. *U.S. Secretary of Labor* (Court No. 02–00565).

The Department's initial denial of the petition for employees of Delphi Automotive Systems Corporation, Delphi Delco Electronics Division, Body and Security Team, Oak Creek, Wisconsin (NAFTA–05755) was issued on April 16, 2002 and published in the **Federal Register** on May 2, 2002 (67 FR 22115). The denial was based on the fact that the workers' firm did not produce an article as required for certification under section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974.

On administrative reconsideration, the Department issued a ''Notice of Negative Determination Regarding Application for Reconsideration'' on June 18, 2002 for the employees of Delphi Automotive Systems Corporation, Delphi Delco Electronics Division, Body and Security Team, Oak Creek, Wisconsin. The notice was published in the **Federal Register** on July 22, 2002 (67 FR 47865 and 47866). The Department affirmed that workers were not engaged in the production of a product at the subject facility. The Department found that any shifts in plant activities were related to engineering, rather than production.

On remand, the Department contacted the company for additional information concerning plant activities and potential shifts in these activities to Mexico.

Based on additional information obtained from the company, it has become apparent that a portion of the functions performed at the subject firm

constitute a fundamental part of the production of an article. It has also been determined that this production and a meaningful portion of plant support activities were shifted to Mexico, thus leading to plant employment declines during the relevant period.

This certification is limited to the workers of the company listed on the first page of the petition as ''the company division or subdivision of the subject (affected) workers'': Delphi Automotive Systems Corporation, Delphi Delco Electronics Division, Body and Security Team, Oak Creek, Wisconsin. This petition does not cover the workers of Manpower Professional, an unaffiliated firm of the subject firm.

On page two of their petition the petitioners identified Manpower Professional as a ''primary firm affected by NAFTA.'' However, Manpower Professional supplied personnel to Delphi's Oak Creek facility and therefore was not a ''primary firm.'' Manpower Professional did not supply components, unfinished, or semifinished goods to Delphi's Oak Creek facility, nor did they assemble or finish products made by Delphi's Oak Creek facility.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Delphi Automotive Systems Corporation, Delphi Delco Electronics Division, Body and Security Team, Oak Creek, Wisconsin who became totally or partially separated from employment on or after January 3, 2001, through two years from the issuance of this revised determination, are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC this 17th day of June 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16897 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0209 2003]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; OSHA Data Initiative (1218–0209)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection request for the OSHA Data Initiative. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 2, 2003. The Department of Labor is particularly interested in comments that:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 1218–1209 2003, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–2350. Written comments limited to 10 pages or fewer may be transmitted by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistical Analysis, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3644, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1886. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 693–1886 or Todd Owen at (202) 693–3222. For electronic copies of the OSHA Data Initiative information collection request, contact OSHA's Web Page on the Internet at *http://www.osha-slc.gov/OCIS/Info coll.html.*

SUPPLEMENTARY INFORMATION:

I. Background

To meet many of OSHA's program needs, OSHA is proposing to continue its data initiative to collect occupational injury and illness data and information on the number of workers employed and the number of hours worked from establishments in portions of the private sector and from some state and local government agencies. OSHA will collect calendar year 2002 data from up to 109,000 employers already required to create and maintain records pursuant to 29 CFR part 1904. These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of the data collection initiative is critical to OSHA's outreach and enforcement efforts and the data requirements tied to the Government Performance and Results Act (GPRA).

II. Current Actions

This notice requests public comment on an extension of the current OMB approval of the paperwork requirements for the OSHA Data Initiative system.

Type of Review: Extension of currently approved collection.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Initiative.

OMB Number: 1218–0209.

Agency Number: ICR 1218–0209–2003.

Affected Public: Business or other for-profit, Farms, and State, Local or Tribal Government.

Cite/Reference/Form/etc; OSHA Form 196A and OSHA Form 196B.

Total Respondents: 109,000.

Frequency: Annually.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 17,440 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 25, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–16849 Filed 7–2–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Media Arts section (Services to Arts Organizations and Artists category), will be held by teleconference from 2 p.m. to 3 p.m. on Wednesday, July 16, 2003 in Room 729 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: June 27, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–16829 Filed 7–2–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On May 27, 2003, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on June 27, 2003 to:

Lawrence J. Conrad
Permit No. 2004–002
Mark Buckley
Permit No. 2004–003

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–16860 Filed 7–2–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

Rochester Gas and Electric Corp., R.E. Ginna Nuclear Power Plant; Notice of Availability of Draft Supplement 14 to Generic Environmental Impact Statement and Public Meeting for the License Renewal of R.E. Ginna Nuclear Power Plant

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating license DPR–18 for an additional 20 years of operation at R.E. Ginna Nuclear Power Plant (Ginna). Ginna is located in Wayne County, New York, approximately 20 miles east of Rochester, New York. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available for public inspection in the NRC's Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or, electronically, from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the Ontario Public Library, located at 1850 Ridge Road, Ontario, New York, and the Rochester Public Library, located at 115 South Avenue, Rochester, New York, have agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by September 16, 2003. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at *GinnaEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and from the PARS component of ADAMS.

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the

GEIS and to accept public comments on the document. The public meeting will be held on August 7, 2003, at the Ontario Fireman's Exempt Hall, 1840 Route 104, Ontario, New York. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Robert G. Schaaf by telephone at 1–800–368–5642, extension 1312, or by e-mail at *rgs@nrc.gov* no later than July 30, 2003. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual, oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Schaaf's attention no later than July 30, 2003, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

For further information contact: Mr. Robert G. Schaaf, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Mr. Schaaf may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 24th day of June, 2003.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–16865 Filed 7–2–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: SF 2803 and SF 3108

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. SF 2803, Application to Make Deposit or Redeposit (CSRS), and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

In addition to the current Federal employees who will use these forms, we expect to receive approximately 75 filings of each form from former Federal employees per year. This gives us a total of 150 filings. Each form takes approximately 30 minutes to complete. The annual burden is 75 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540; and Allison Edyt, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–16740 Filed 7–2–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: SF 3106 and SF 3106A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. SF 3106, Application for Refund of Retirement Deductions/ Federal Employees Retirement System (FERS), is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. SF 3106A, Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS, is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

Approximately 17,000 of SF 3106 will be processed annually. The SF 3106 takes approximately 30 minutes to complete for a total of 8,500 hours annually. Approximately 13,600 of SF 3106A will be processed annually. The SF 3106A takes approximately 5 minutes to complete for a total of 1,133 hours. The total annual burden is 9,633 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540; and Allison Eydt, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of

Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–16741 Filed 7–2–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and Open Season Online

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. The Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season web site, Open Season Online, is used by retirees and survivors; it collects information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management when the FEHB payment is greater than the monthly annuity amount, or requesting FEHB plan accreditation and Customer Satisfaction Survey information.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate that we will receive 112,000 responses per year to the IVR system and the on-line web site. Each response takes approximately 10 minutes to complete. The annual burden is 18,666 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to William C. Jackson, Group Leader, Retirement Eligibility and Services Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2336, Washington, DC 20415–3560.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–16754 Filed 7–2–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Deborah Grade, Acting Director, Washington Services Branch, Center for Talent Services, Division for Human Resources Products and Services, (202) 606–5027.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between April 1, 2003 and April 30, 2003. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A. No Schedule A appointments for April 2003.

Schedule B. No Schedule B appointments for April 2003.

Schedule C. The following Schedule C appointments were approved for April 2003:

Council on Environmental Quality

Associate Director for Global Environmental Affairs to the Chair, Council on Environmental Quality. Effective April 18, 2003.

Department of Agriculture

Special Assistant to the Administrator for Risk Management. Effective April 2, 2003.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective April 4, 2003.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective April 4, 2003.

Special Assistant to the Chief for Natural Research Conservation Service. Effective April 11, 2003.

Special Assistant to the Administrator for the Farm Service Agency. Effective April 25, 2003.

White House Liaison to the Secretary of Agriculture. Effective April 25, 2003.

Department of the Army (Department of Defense)

Personal and Confidential Assistant to the Assistant Secretary of the Army. Effective April 7, 2003.

Department of Commerce

Confidential Assistant to the Deputy Assistant Secretary for Export Promotion Service. Effective April 1, 2003.

Policy Advisor to the Director for Legislative Affairs. Effective April 9, 2003.

Deputy Director to the Director for Executive Secretariat. Effective April 24, 2003.

Senior Advisor to the Assistant Secretary and Director General of the U.S. and Foreign Commercial Service, International Trade Administration. Effective April 25, 2003.

Deputy Director to the Director for White House Liaison. Effective April 28, 2003.

Department of Defense

Staff Assistant to the Deputy Under Secretary of Defense (Special Plans and Near East/South Asia). Effective April 7, 2003.

Staff Specialist to the Deputy Under Secretary of Defense for Logistics and Materials. Effective April 11, 2003.

Special Assistant to the Principal Deputy Under Secretary of Defense (Policy). Effective April 17, 2003.

Defense Fellow to the Special Assistant to the Secretary of Defense for

White House Liaison. Effective April 22, 2003.

Department of Education

Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective April 4, 2003.

Deputy Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services. Effective April 8, 2003.

Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective April 8, 2003.

Confidential Assistant to the Assistant Secretary for Management/Chief Information. Effective April 9, 2003.

Confidential Assistant to the Chief of Staff. Effective April 10, 2003.

Deputy Director of Communications to the Director for Public Affairs (Communications Director). Effective April 10, 2003.

Deputy Secretary's Regional Representative-Region VII to the Deputy Assistant Secretary for Regional Services. Effective April 11, 2003.

Special Assistant to the Assistant Secretary for Management/Chief Information Officer. Effective April 18, 2003.

Department of Energy

Advisor for Legislative Affairs to the Assistant Secretary for Conservation and Renewable Energy. Effective April 2, 2003.

Senior Policy Advisor to the Secretary for the Department of Energy. Effective April 4, 2003.

Senior Advisor to the Assistant Secretary for Conservation and Renewable Energy. Effective April 4, 2003.

Special Assistant for Intergovernmental Affairs to the Assistant Secretary for Energy (Environmental Management). Effective April 11, 2003.

Chief of Staff/Senior Policy Advisor for North American Affairs to the Assistant Secretary for International Affairs. Effective April 17, 2003.

Special Assistant to the Director for Scheduling and Advance. Effective April 24, 2003.

Department of Health and Human Services

Senior Advisor to the Assistant Secretary for Legislation. Effective April 17, 2003.

Department of Homeland Security

Executive Assistant to the Director for National Capital Region Coordination. Effective April 2, 2003.

Director for Local Affairs to the Director for State and Local Affairs. Effective April 7, 2003.

Director for State Affairs to the Director for State and Local Affairs. Effective April 10, 2003.

Special Assistant to the Director for Citizenship and Immigration Services. Effective April 9, 2003.

Press Assistant to the Assistant Secretary for Public Affairs. Effective April 11, 2003.

Business Liaison to the Special Assistant to the Secretary, Private Sector. Effective April 14, 2003.

Director of Speechwriting to the Assistant Secretary for Public Affairs. Effective April 15, 2003.

Business Analyst to the Special Assistant to the Secretary, Private Sector. Effective April 17, 2003.

Policy Analyst to the Deputy Chief of Staff (Policy). Effective April 18, 2003.

Press Secretary for Science and Technology to the Assistant Secretary for Public Affairs. Effective April 23, 2003.

Executive Assistant to the Assistant Secretary for Plans, Programs and Budgets. Effective April 24, 2003.

Associate Executive Secretary (Internal Coordination) to the Executive Secretary. Effective April 24, 2003.

Staff Assistant to the Deputy Secretary for the Department of Homeland Security. Effective April 24, 2003.

Special Assistant to the Under Secretary for Management. Effective April 24, 2003.

Scheduler to the Under Secretary for Management. Effective April 24, 2003.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Community Planning and Development. Effective April 4, 2003.

Staff Assistant to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective April 29, 2003.

Deputy Assistant Secretary for Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective April 30, 2003.

Department of the Interior

Counselor to the Assistant Secretary for Indian Affairs. Effective April 29, 2003.

Hispanic Media Outreach to the Director for Communications. Effective April 30, 2003.

Department of Justice

Counsel to the Assistant Attorney General. Effective April 2, 2003.

Special Assistant to the Assistant Attorney General, Criminal Division. Effective April 2, 2003.

Special Assistant to the Director for Community Oriented Policing Services. Effective April 22, 2003.

Counsel to the Associate Attorney General. Effective April 22, 2003.

Staff Assistant to the Assistant Attorney General for the Tax Division. Effective April 30, 2003.

Department of Labor

Deputy Director to the Director for Faith-Based and Community Initiatives. Effective April 4, 2003.

Special Assistant to the Assistant Secretary for Administration and Management. Effective April 11, 2003.

Staff Assistant to the Director for Public Liaison. Effective April 11, 2003.

Special Assistant to the Assistant Secretary for Employment Standards. Effective April 15, 2003.

Staff Assistant to the Assistant Secretary for Policy. Effective April 22, 2003.

Department of State

Special Assistant to the Assistant Secretary for African Affairs. Effective April 14, 2003.

Foreign Affairs Officer to the Assistant Secretary for Intelligence and Research. Effective April 14, 2003.

Special Assistant to the Assistant Secretary for African Affairs. Effective April 24, 2003.

Department of Transportation

Senior Policy Advisor to the Administrator for the Maritime Administration. Effective April 2, 2003.

Assistant to the Secretary for Policy to the Secretary for Transportation. Effective April 9, 2003.

Special Assistant to the Administrator for Research and Special Programs Administration. Effective April 9, 2003.

Director for Public and Consumer Affairs to the Administrator for the Federal Motor Carrier Safety Administration. Effective April 9, 2003.

Department of the Treasury

Senior Advisor to the Under Secretary for Domestic Finance. Effective April 9, 2003.

Special Assistant to the Director for Strategic Planning, Scheduling and Advance. Effective April 14, 2003.

Special Assistant to the Assistant Secretary (Deputy Under Secretary) for International Affairs. Effective April 24, 2003.

Special Assistant to the Assistant Secretary for Legislative Affairs. Effective April 29, 2003.

Special Assistant to the Chief of Staff. Effective April 29, 2003.

Special Assistant to the Assistant Secretary for Legislative Affairs. Effective April 29, 2003.

Environmental Protection Agency

Special Assistant to the Associate Administrator for Congressional and Intergovernmental Relations. Effective April 29, 2003.

Senior Policy Advisor to the Deputy Assistant Administrator for Water. Effective April 30, 2003.

National Endowment for the Arts

Speechwriter to the Chairman for the National Endowment for the Arts. Effective April 25, 2003.

Director for Development to the Senior Deputy Chairman. Effective April 29, 2003.

Office of National Drug Control Policy

Legislative Analyst to the Associate Director for Legislative Affairs. Effective April 1, 2003.

Confidential Counsel to the Deputy Director for Demand Reduction. Effective April 30, 2003.

Office of Personnel Management

Deputy Chief of Staff to the Chief of Staff. Effective April 24, 2003.

Office of the United States Trade Representative

Deputy Assistant U.S. Trade Representative to the Assistant U.S. Trade Representative for Congressional Affairs. Effective April 1, 2003.

Small Business Administration

National Director for Native American Affairs to the Associate Deputy Administrator for Entrepreneurial Development. Effective April 9, 2003.

National Director—Matchmaking to the Associate Deputy Administrator for Government Contracts. Effective April 16, 2003.

Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective April 18, 2003.

Social Security Administration

Confidential Assistant to the Chief of Staff. April 25, 2003.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–16742 Filed 7–2–03; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ac2–2 and Form TA–2, SEC File No. 270–298, OMB Control No. 3235–0337.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17Ac2–2 and Form TA–2 (OMB Control No. 3235–0337; SEC File No. 270–298).

Rule 17Ac2–2, 17 CFR 240.17Ac2–2, and Form TA–2 under the Securities Exchange Act of 1934 require transfer agents to file an annual report of their business activities with the Commission. The amount of time needed to comply with the requirements of Rule 17Ac2–2 and Form TA–2 varies. From the total 1,210 registered transfer agents, approximately 300 registrants would be required to complete only Questions 1 through 4 and the signature section of amended Form TA–2, which we estimate would take each registrant about 30 minutes, for a total burden of 150 hours (300 × .5 hours). Approximately 410 registrants would be required to answer Questions 1 through 5, 10, and 11 and the signature section, which we estimate would take about 1 hour and 30 minutes, for a total of 615 hours (410 × 1.5 hours). The remaining registrants, approximately 500, would be required to complete the entire Form TA–2, which we estimate would take about 6 hours, for a total of 3000 hours (500 × 6 hours). We estimate that the total burden would be 3,765 hours (150 hours + 615 hours + 3000 hours).

We estimate that the total cost of reviewing and entering the information reported on the Forms TA–2 for respondents is $31.50 per hour. The Commission estimates that the total cost would be $118,597.50 annually ($31.50 × 3,765).

Rule 17Ac2–2 does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 26, 2003.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 03–16885 Filed 7–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Form 2–E, Rule 609, SEC File No. 270–222, OMB Control No. 3235–0233.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form 2–E under the Securities Act of 1933, Report of Sales Pursuant to Rule 609 of Regulation E; and Rule 609 under the Securities Act of 1933, Report of Sales.

Form 2–E (17 CFR 239.201) is used by small business investment companies or business development companies engaged in limited offerings of securities to report semi-annually the progress of the offering, including the number of shares sold. The form solicits information such as the dates an offering has commenced and has been completed, the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. This information assists the staff in determining whether the issuer has stayed within the limits of an offering exemption.

Form 2–E must be filed semi-annually during an offering and as a final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the limited offering in order to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

During the calendar year 2002, there were four filings of Form 2–E by two respondents. The Commission estimates, based on its experience with disclosure documents generally and Form 2–E in particular, and based on informal contacts with the investment company industry, that the total annual burden associated with information collection, Form 2–E preparation, and submission is four hours per filing or 16 hours for all respondents.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Form 2–E does not involve any recordkeeping requirements. The information required by the form is mandatory and the information provided will not be kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 23, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16886 Filed 7–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–14137]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (HLM Design, Inc., Common Stock, $.001 par value)

June 27, 2003.

HLM Design, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Board of Directors (''Board'') of the Issuer approved resolutions on June 20, 2003 to withdraw the Issuer's Security from listing on the Amex. The Board of the Issuer states that it is taking such action for the following reasons: (i) The current trading market for the Issuer's Security does not provide liquidity for the Issuer's stockholders or realistic potential for share appreciation and otherwise limits the Issuer's ability to engage in transactions based on the Issuer's true enterprise value; and (ii) ongoing audit and legal fees, stock exchange fees, the costs of investor relations, press releases and annual reports, director and officer liability insurance premiums attributable to the Issuer's public company status, and potential additional costs and related management time and attention associated with compliance with the Sarbanes-Oxley Act and related rulemaking from the Amex and the Commission represent, collectively, a substantial annual burden to the Company.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under section 12(b) of the Act[3] shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before July 18, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–16813 Filed 7–2–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 7, 2003:

A Closed Meeting will be held on Tuesday, July 8, 2003 at 2 p.m., and an Open Meeting will be held on Thursday, July 10, 2003, at 2 p.m. in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, July 8, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

Formal orders of investigation;
Post-argument discussion; and
Opinions.

The subject matter of the Open Meeting scheduled for Thursday, July 10, 2003 will be:

1. The Commission will hear oral argument on an appeal by the Division of Enforcement and the Office of the Chief Accountant from an initial decision of an administrative law judge. The law judge found that Michael J. Marrie and Brian L. Berry did not engage in improper professional conduct within the meaning of Rule of Practice 102(e) during the course of an audit by the accounting firm of Coopers & Lybrand LLP (Coopers) of the 1994 fiscal year financial statements of California Micro Devices, Inc. (CMD), a public company. Marrie, a certified public accountant and former partner with Coopers, was the engagement partner for the audit of CMD. Berry, a certified public accountant and former manager with Coopers, was the audit manager for the CMD audit.

The Division alleges that Marrie and Berry recklessly failed to comply with applicable standards of professional conduct in their audit of CMD's 1994 fiscal year financial statements in three areas: (a) CMD's write-off of $12 million of accounts receivable; (b) confirmation of CMD's accounts receivable, and (c) CMD's sales returns and allowances for sale returns. The Division maintains that Marrie and Berry recklessly failed to conduct the audit in accordance with Generally Accepted Auditing Standards as a result of their failure to exercise professional skepticism and to obtain sufficient competent evidential matter with respect to these audit areas.

Among the issues likely to be considered are:

a. Whether respondents committed the alleged violations; and

b. if so, whether sanctions should be imposed in the public interest.

2. The Commission will also hear oral argument on an appeal by Michael A. Flanagan, Ronald O. Kindschi, and Spectrum Administration, Inc. of an initial decision of an administrative law judge. During the period covered by this Commission proceeding, Flanagan and Kindschi were registered representatives with FSC Securities Corporation, a registered broker-dealer. Kindschi also was associated with Spectrum Administration, a registered investment adviser.

The law judge found that Flanagan and Kindschi willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder. The law judge also found that Spectrum Administration violated Sections 206(1) and (2) of the Investment Advisers Act of 1940, and that Kindschi, in his role as an associated person of Spectrum Administration, aided and abetted Spectrum Administration's violations. The law judge concluded that the Respondents committed fraud by steering certain customers to purchase Class B shares in various mutual funds without disclosing all material facts regarding the costs associated with those purchases, thereby depriving these customers of the discounts on sales charges that would have been applicable to their investments had the customers purchased Class A shares in like amounts.

Based on these violations, the law judge suspended Flanagan from association with any broker or dealer for four months, and ordered him to pay a civil money penalty of $10,000 and to disgorge $12,469. The law judge suspended Kindschi from association with any broker, dealer, or investment adviser for three months, and ordered him to pay a civil money penalty of $7,500, and to disgorge $3,762. The law judge also censured Spectrum Administration and imposed cease-and-desist orders on Flanagan, Kindschi, and Spectrum Administration.

Among the issues likely to be considered are:

a. Whether respondents committed the alleged violations; and

b. if so, whether sanctions should be imposed in the public interest.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: June 30, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–17001 Filed 6–30–03; 4:36 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48101; File No. SR–AMEX–2003–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 by the American Stock Exchange LLC Relating to the Dissemination of Option Quotations

June 26, 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 4, 2003, the American Stock Exchange, LLC (''Amex'' 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 Amex. On May 15, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] On June 12, 2003, the Amex 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to permit the dissemination of option quotes in sizes of less than ten (10) contracts. Below is the text of the proposed rule change. Proposed new text is *italicized* and proposed deleted text is [bracketed].

* * * * *

Rule 958A. Application of the Firm Quote Rule

(a) No Change

(b) No Change

(c) Obligations of a Responsible Broker or Dealer—

(i) Pursuant to SEC Rule 11Ac1–1 each responsible broker or dealer for each series of each listed option class shall promptly communicate to the Exchange its best bid, best offer, quotation size and aggregate quotation size. No responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than [ten] *one* contract[s]. This obligation may be fulfilled by the use of an automated quotation system.

(A) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any customer order in an option series in an amount up to its published quotation size.

(B) Subject to the provisions of paragraph (d) of this rule, each responsible broker or dealer shall be obligated to execute any order for the account of a U.S. registered or foreign broker or dealer in a listed option in an amount up to the quotation size established and periodically published by the Exchange which quotation size shall be for at least one contract.

(C) Subject to the provisions of paragraph (d) of this Rule, each responsible broker or dealer shall comply with the Thirty Second Response provisions set forth in paragraph (d)(3) of SEC Rule 11Ac1–1.

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[1] 15 U.S.C. 78s(b)(1).

[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, Commission, dated May 12, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange made modifications to the purpose section of this notice to provide more detail and specificity regarding the proposal. The substance of Amendment No. 1 has been incorporated in this notice in its entirety.

[4] *See* Letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 11, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange made minor technical amendments to language in the purpose section. The substance of Amendment No. 2 has been incorporated in this notice in its entirety.

(ii) No Change
(d) No Change

Commentary————

.01 No specialist or registered options trader shall be deemed to be a responsible broker or dealer with respect to a published bid or offer that is erroneous as a result of an error or omission made by the Exchange or any quotation vendor. If a published bid or published offer is accurate but the published quotation size (or published aggregate quotation size, as the case may be) associated with it is erroneous as a result of an error or omission made by the Exchange or any quotation vendor, then the specialist and registered options traders responsible for the published bid or published offer shall be obligated as set forth in paragraph (c) of Rule 11Ac1–1 but only to the extent of [ten] *one* contract[s].

.02 No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

In 2001, the Exchange amended the firm quote requirement in Amex Rule 958A to accommodate the application of Rule 11Ac1–1 (the ''Quote Rule'') under the Act.[5] The amendments to the Commission's Quote Rule in 2000 were made to apply the firm quote requirements to the option exchanges and option market makers, thereby, requiring a corresponding revision to the rules of the options exchanges.[6] At that time, the Amex proposed in Rule 958A that ''no responsible broker or dealer shall communicate a quotation size or aggregate quotation size for less than ten (10) contracts.''

In applying the Quote Rule to the options markets, the Commission has given the options exchanges the flexibility to determine whether they will collect from responsible brokers or dealers and make available to quotation vendors the size associated with each quotation or choose instead to establish by rule the size for which their disseminated bid and offer in each option series is firm and not collect and disseminate size with each quotation. The Commission has also given the options exchanges the flexibility to disseminate quotations with sizes at which the specialist and registered traders are firm for customer accounts, and, at the same time, establish by rule a different size for which specialists and registered traders must be firm for orders from the accounts of broker-dealers.

As indicated above, the Amex previously determined that it would disseminate a size of ten (10) contracts for all of its option quotations regardless of the underlying ''actual'' size associated with such quote. In connection with the dissemination of option quotations, the Exchange amended and received Commission approval of Amex Rule 958A requiring that the communicated and disseminated size be a minimum of ten (10) contracts. Therefore, responsible brokers or dealers on the Amex are required to disseminate a minimum size of ten (10) contracts for all options quotations regardless of whether such quotations may represent a customer or broker-dealer order.

The operation of Amex Rule 958A in paragraph (c)(i)(A) requires that each responsible broker or dealer execute customer orders in an option series in an amount up to its published quotation size. As a result, specialists and registered options traders (''ROTs'') are required to be firm for customer orders of up to 10 contracts regardless of the actual size of the customer order. Paragraph (c)(i)(B) of Amex Rule 958A provides that specialists and ROTs are obligated to be firm for the account of broker-dealer orders, including foreign broker-dealers, for at least one (1) contract.

The effect of the instant proposal will be that if the disseminated quotation on behalf of a customer order is for an order of less than ten (10) contracts, the Exchange would no longer disseminate a minimum size of ten (10) contracts, but instead, would disseminate the actual size of the associated customer order. As a result, the responsible broker or dealer would not be required to execute a minimum size of ten (10) contracts for a customer order that has an actual size of less than ten (10) contracts. Therefore, under the proposed amendment to Amex Rule 958A, the responsible broker or dealer will now be firm to customers based upon the actual size of the order rather than an artificial minimum of ten (10) contracts.[7] The proposed rule change also provides for a corresponding amendment to Commentary .01 to Amex Rule 958A so that the specialist and ROT responsible for the published bid or offer is obligated for one (1) contract rather than ten (10) contracts in connection with an erroneous bid or offer that is the result of an error or omission by the Exchange or a quotation vendor.

For purposes of the application of the Options Intermarket Linkage (the ''Linkage''), the Amex represents that the proposal will not affect the Exchange's Linkage rules. In particular, ''Firm Customer Quote Size'' [8] and ''Firm Principal Quote Size'' [9] as defined in Amex Rule 940 will not be revised.[10] Accordingly, the obligation of

[5] *See* Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001); and Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001).

[6] *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

[7] An example of the rule's current operation is as follows: An Exchange specialist disseminates a market of 2 bid, 2.20 asked, in a particular option series at the minimum size of 10 contracts. An incoming order to buy one contract for 2.10 is entered making the new best bid and offer 2.10 bid, 2.20 asked. The Exchange disseminates 10 contracts as the size of the 2.10 bid. If a market order to sell 10 contracts is then entered in that series, the responsible broker-dealer (generally the specialist) is obligated to buy the 9 contracts at a price of 2.10. This proposal would eliminate the responsible broker or dealers obligation to be firm for the balance between the actual size of a customer limit order and ten contracts as illustrated under this example.

[8] Exchange Rule 940(b)(7) defines ''Firm Customer Quote Size'' as the lesser of: (a) The number of option contracts that the Participant Exchange sending a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market; or (b) the number of option contracts that the Participant Exchange receiving a P/A Order guarantees it will automatically execute at its disseminated quotation in a series of an Eligible Option Class for Public Customer orders entered directly for execution in that market. The number shall be at least 10.

[9] Exchange Rule 940(b)(8) defines ''Firm Principal Quote Size'' as the number of options contracts that a Participant Exchange guarantees it will execute at its disseminated quotation for incoming Principal Orders in an Eligible Option Class. This number shall be at least 10.

[10] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (Original Linkage Plan Approval); 44482 (June 27, 2001), 66FR 35470 (July 5, 2001) (Plan Amendment No. 1 Approval); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002) (Plan Amendments No. 2 and 3 Approval); 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Plan Amendment No. 4 Approval); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003) (Plan Amendment No. 5 Approval); and 47297 (January 31, 2003), 68 FR

Continued

the specialist to execute at least a size of ten (10) contracts will be unchanged in connection with Linkage Orders. With respect to automatic executions (''Auto-Ex'') outside of Linkage, the proposed change will not affect the current minimum Auto-Ex size of ten (10) contracts. Accordingly, orders that are not Auto-Ex eligible [11] or are subject to an exception in Amex Rule 933(f), will be manually handled by the specialist and will receive an execution size of up to the disseminated size of the quoted market.

The Exchange believes that the instant proposal to revise the operation of Amex Rule 958A so that option quotes are disseminated in actual size should provide greater transparency to investors and the marketplace because the actual size of orders will be disclosed rather than an artificial minimum size. In addition, the Amex further believes that the proposal to disseminate the actual size of quotes will better reflect the true state of liquidity being offered at that time by the trading crowd. The Exchange notes, that as a result of the proposed rule change, the responsible broker or dealer would be permitted to disseminate a size of less than ten (10) contracts. Currently, the responsible broker or dealer is required to disseminate a size of at least ten (10) contracts.

The Exchange submits that the adoption of this proposal will foster increased competition by the Amex against markets that disseminate quotes with actual size. The Auto-Ex system at the Amex available for both customer and broker-dealer orders would not be impacted by this proposal.[12] In addition, the dissemination of actual size quotes should also enable specialists and ROTs to better manage their risks by enabling such specialists and/or ROTs to reflect the size in quotes based on market factors rather than regulatory requirements. The Amex seeks through this proposal to match other option exchanges that currently are able to disseminate actual size market quotations for customer orders.[13] We believe that this proposal should lead to increased competition on the basis of size among the options exchanges, enabling investors to receive better executions.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[14] in general, and furthers the objectives of section 6(b),[15] in particular, in that they 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.

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

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

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 Amex consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. 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 Amex. All submissions should refer to File No. SR–Amex-2003–24 and should be submitted by July 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16884 Filed 7–2–03; 8:45 am]

BILLING CODE 8010–01–P

6526 (February 7, 2003) (Approval of Amex Linkage Rules).

[11] The minimum eligible Auto-Ex size is ten (10) contracts while the maximum eligible Auto-Ex size is determined by the Exchange subject to a 500 contract ceiling (except in the case of options on QQQs which may be 2,000 contracts for the two near term months and 1,000 contracts for all other months).

[12] *See* Securities Exchange Act Release Nos. 22610 (November 8, 1985), 50 FR 47480 (November 18, 1985) (pilot program for XMI options); 23544 (August 20, 1986), 51 FR 30601 (August 27, 1986) (permanent approval of XMI pilot); 24714 (July 17, 1987), 52 FR 28396 (July 29, 1987) (expansion to competitively traded options); and 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002) (automatic execution of broker-dealer option orders). Auto-Ex is an automated execution system that enables member firms to route public customer market and limit orders in options for automatic execution at the bid or offer at the time the order is entered. Auto-Ex executes, at the displayed bid or offer, customer market and immediately executable limit option orders up to a specified number of contracts routed through the Common Message Switch (CMS'') and the Amex Order File (''AOF''). There are, however, some situations in which orders otherwise eligible for execution on Auto-Ex are routed to the specialist's book, known as the Amex Options Display Book or ''AODB,'' for an execution. These situations occur when (i) the best bid or offer is represented by a limit order on the AODB, (ii) the best bid or offer is locked or crossed, (iii) there is a better bid or offer being displayed by a competing market, or (iv) when certain systems allowable parameters have been exceeded.

[13] *See* Securities Exchange Act Release Nos. 46325 (August 8, 2002), 67 FR 53376 (August 15, 2002) (Phlx 2002–15); 46029 (June 4, 2002), 67 FR 40362 (June 12, 2002) (PCX 2002–30); and 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (CBOE 2001–70).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48108; File Nos. SR–NYSE–2002–46 and SR–NASD–2002–140]

Self-Regulatory Organizations; New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc.; Order Approving NYSE and Nasdaq Proposed Rule Changes and Nasdaq Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 Thereto Relating to Equity Compensation Plans

June 30, 2003.

I. Introduction

On October 7, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal relating to shareholder approval of equity-compensation plans and the voting of proxies. On October 11, 2002, the NYSE proposal was published for public comment in the **Federal Register**.[3] On November 6, 2002, the NYSE filed NYSE Amendment No. 1 to the proposed rule change.[4] The Commission received a total of 30 comment letters on the NYSE proposal.[5] On June 20, 2003, the NYSE filed NYSE Amendment No. 2 to its proposal.[6]

On October 9, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed a similar proposal relating to shareholder approval for stock option plans and other equity compensation arrangements. On October 10, 2002, Nasdaq filed Nasdaq Amendment No. 1 to the proposed rule change.[7] On October 17, 2002, the Nasdaq proposal, as amended, was published for comment in the **Federal Register**.[8] The Commission received a total of 18 comment letters on the Nasdaq proposal.[9] On March 24, 2003, Nasdaq filed Nasdaq Amendment No. 2 to the proposed rule change.[10] On June 23, 2003, Nasdaq filed Nasdaq Amendment No. 3 to its proposal.[11] This order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (''Notice of the NYSE Proposal''). The Commission also published a correction to the Notice of the NYSE Proposal to indicate that the word ''less'' in footnote 10 should be changed to ''greater.'' *See* Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002).

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 5, 2002 (''NYSE Amendment No. 1''). In NYSE Amendment No. 1, the NYSE made technical corrections to its proposed rule language.

[5] *See* letters to Jonathan G. Katz, Secretary, Commission, from Deborah Ackerman, Vice President and General Counsel, Southwest Airlines Co., dated October 15, 2002 (''Southwest Airlines Letter''); Peter C. Clapman, Senior Vice President and Chief Counsel, Corporate Governance, Teacher Insurance and Annuity Association of America College Retirement And Equities Fund (''TIAA CREF''), dated October 24, 2002 (''TIAA CREF Letter''); R. Thomas Buffenbarger, International President, International Association of Machinists and Aerospace Workers (''IAM''), dated October 22, 2002 (''IAM Letter''); Sarah A.B. Teslik, Executive Director, Council of Institutional Investors (''CII''), dated October 24, 2002 (''CII Letter''); Linda S. Selbach, Global Proxy Manager, Barclays Global Investors, dated October 24, 2002 (''Barclays Letter''); Henry I. Morgenbesser *et al.*, Allen & Overy *et al.*, dated October 31, 2002 (''Allen & Overy Letter''); Keith Johnson, Chief Legal Counsel, State of Wisconsin Investment Board (''SWIB''), dated October 31, 2002 (''SWIB Letter''); Peter A. Irwin, Vice President, Legal Services, Consolidated Edison Company of New York, Inc. (''conEdison''), dated October 31, 2002 (''conEdison Letter''); John P. Clarson, Assistant Corporate Secretary and Senior Corporate Attorney, Law Department, RadioShack Corporation, dated October 30, 2002 (''RadioShack Letter''); Paul Lee, Shareholder Engagement Manager, Hermes Investment Management Limited, dated October 29, 2002 (''Hermes Letter''); John Endean, President, American Business Conference (''ABC''), dated October 31, 2002 (''ABC Letter''); James P. Hoffa, General President, International Brotherhood of Teamsters (''IBT''), dated November 1, 2002 (''IBT Letter''); Dorothy M. Donohue, Associate Counsel, Investment Company Institute (''ICI''), dated November 1, 2002 (''ICI Letter''); Damon A. Silvers, Associate General Council, American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''), dated November 1, 2002 (''AFL–CIO Letter''); Nancy Straus Sundheim, Senior Vice President and General Counsel, Unisys Corporation, dated November 1, 2002 (''Unisys Letter''); Michael R. Fanning, Chief Executive Officer, Central Pension Fund of the International Union of Operating Engineers and Participating Employers (''CPF''), dated October 29, 2002 (''CPF Letter''); Ted White, Director, Corporate Governance, California Public Employees' Retirement System (''CalPERS''), dated October 31, 2002 (''CalPERS Letter''); Sheila W. Beckett, Employees Retirement System of Texas, dated October 30, 2002 (''Employee Retirement System of Texas Letter''); Herbert L. Dryer, Executive Director, State Teachers Retirement System of Ohio (''STRS Ohio''), dated October 30, 2002 (STRS Ohio Letter''); William G. Clark, Deputy Director, New Jersey Division of Investment (''NJ Division''), Department of Treasury, dated October 31, 2002 (''NJ Division Letter''); James E. Heard, Chief Executive Officer and Patrick McGurn, Vice President and Special Counsel, Institutional Shareholder Services (''ISS''), dated October 31, 2002 (''ISS I Letter''); Sullivan & Cromwell, dated November 1, 2002 (''Sullivan & Cromwell Letter''); Mark Heesen, President, National Venture Capital Association (''NVCA''), dated November 1, 2002 (''NVCA I Letter''); Marsha Richter, Chief Executive Officer, Los Angeles County Employees Retirement Association (''LACERA''), dated November 7, 2002 (''LACERA Letter''); Stanley Keller, Chair, Committee on Federal Regulation of Securities, American Bar Association (''ABA''), Section of Business Law, dated November 11, 2002 (''ABA Letter''); Kay R. H. Evans, Executive Director, Maine State Retirement System (''MSRS''), dated October 28, 2002 (''MSRS Letter''); Jerome Pella, dated October 30, 2002 (''Pella Letter''); Michael Ryan, Executive Vice President and General Counsel, American Stock Exchange LLC (''Amex''), dated December 19, 2003 (''Amex I Letter''); Claudia Crowley, Vice President, Listing Qualifications, Amex, dated February 19, 2003 (''Amex II Letter''); and William and Margaret Gillespie, dated May 17, 2003 (Gillespie Letter'').

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 20, 2003 (''NYSE Amendment No. 2''). In NYSE Amendment No. 2, the NYSE proposed changes to the NYSE proposal based on discussions with Commission staff and in response to the comment letters. As discussed below, NYSE Amendment No. 2, among other things, did the following: (1) Clarified the terms ''equity compensation plan,'' ''material revision,'' and ''repricing'; (2) defined ''evergreen,'' ''formula'' and ''discretionary'' plans; and (3) provided new transition rules. For a more detailed description of NYSE Amendment No. 2, *see* Section II.A., *infra.*

[7] *See* letter from John D. Nachmann, Senior Attorney, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 10, 2002 (''Nasdaq Amendment No. 1''). In Amendment No. 1, Nasdaq did the following: (1) Made technical corrections to its proposed rule language; (2) clarified the exceptions to shareholder approval for tax qualified, non-discriminatory employee benefit plans, parallel nonqualified plans, and plans relating to an acquisition or merger; and (3) clarified in the purpose section of its filing that it was proposing to make conforming changes to NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A).

[8] *See* Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (''Notice of the Nasdaq Proposal''). Nasdaq represents that it made a technical error in its reprinting of the original rule text of NASD Rule 4320(e)(15). Nasdaq is not proposing to change this language. Telephone conversation between Sara Nelson Bloom, Associate General Counsel, Nasdaq, and Sapna C. Patel, Attorney, Division, Commission, on June 30, 2003.

[9] *See* letters to Jonathan G. Katz, Secretary, Commission, from James E. Heard, Chief Executive Officer and Patrick McGurn, Vice President and Special Counsel, ISS, dated November 6, 2002 (''ISS II Letter''); and Mark Heesen, President, NVCA, dated November 1, 2002 (''NVCA II Letter''). The Commission notes that 16 of the 18 comment letters received on the Nasdaq proposal are letters commenting jointly on the NYSE and Nasdaq proposals. *See* TIAA CREF Letter; CII Letter; Barclays Letter; Allen & Overy Letter; SWIB Letter; MSRS Letter; Hermes Letter; ICI Letter; AFL–CIO Letter; CPA Letter; CalPERS Letter; STRS Letter; NJ Division Letter; LACERA Letter; ABA Letter; and Pella Letter.

[10] *See* letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated March 24, 2003 (''Nasdaq Amendment No. 2''). In Nasdaq Amendment No. 2, Nasdaq clarified the term ''material amendment'' to a stock option plan by providing a non-exclusive list of what Nasdaq would consider to be ''material,'' and proposed an exception to shareholder approval for plans that provide a way to purchase shares on the open market or from the issuer at fair market value. Nasdaq replaced Nasdaq Amendment No. 2 in its entirety with Nasdaq Amendment No. 3. As noted below, some of the proposed changes in Nasdaq Amendment No. 2 were incorporated into Nasdaq Amendment No. 3. *See infra* note 11 and Section II.B.

[11] *See* letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated June 23, 2003 (''Nasdaq Amendment No. 3''). In

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approves the NYSE proposal, as amended by NYSE Amendments No. 1 and 2, and the Nasdaq proposal, as amended by Nasdaq Amendments No. 1, 2, and 3. The Commission has found good cause to grant accelerated approval to NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3, as discussed below, and is soliciting comments from interested persons on these amendments.

II. Description of the NYSE and Nasdaq Proposals

A. NYSE Proposal

The NYSE proposes to adopt new section 303A(8) of the NYSE's Listed Company Manual, which would require shareholder approval of all equity-compensation plans and material revisions to such plans, subject to limited exemptions.[12] This new rule, when approved by the Commission, will replace the NYSE's current pilot program relating to amendments to Sections 312.01, 312.03 and 312.04 of the NYSE's Listed Company Manual with respect to the definition of a ''broadly-based'' stock option plan.[13]

Under the NYSE proposal, as amended, an equity compensation plan is defined as a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services, including a compensatory grant of options or other equity securities that is not made under a plan. The NYSE has also proposed changes to clarify certain plans that would not be considered equity compensation plans under its definition.[14] In addition, the NYSE proposal provides for certain types of grants that are exempted from shareholder approval. These limited exemptions include: (1) Inducement awards to person's first becoming an employee of the issuer or any of its subsidiaries; (2) mergers and acquisitions, when conversions, replacements or adjustments of outstanding options or other equity compensation awards are necessary to reflect the transaction, and when shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval; and (3) plans intended to meet the requirements of section 401(a) of the Internal Revenue Code[15] (*e.g.*, ESOPs), plans intended to meet the requirements of section 423 of the Internal Revenue Code,[16] and parallel excess plans. The NYSE also proposes that, in circumstances in which equity compensation plans and amendments to plans are not subject to shareholder approval, the plans and amendments still must be subject to the approval of the company's compensation committee or a majority of the company's independent directors. Finally, in its proposal, the NYSE provides a non-exclusive list of ''material revisions'' to a plan that would require shareholder approval, and also clarifies when plans containing an ''evergreen formula'' and when the ''repricings'' of options in plans would require shareholder approval.[17]

The NYSE also proposes to amend NYSE Rule 452 to prohibit member organizations from voting on equity compensation plans unless the beneficial owner of the shares has given voting instructions. In addition, the NYSE proposes to make conforming changes to current Sections 303.00, 312.03, 312.04, and 402.08 of the NYSE's Listed Company Manual.

NYSE Amendment No. 2 to the NYSE filing proposes a number of changes to the rules as they were published in the Notice of the NYSE Proposal. According to the NYSE, these changes were made in response to the comment letters and discussions with Commission staff. As a general matter, the changes provide additional guidance as to the scope of the NYSE's proposed rule changes, including the type of material changes to a plan that must be submitted for shareholder approval. The NYSE also proposes to include a new section entitled ''Transition Rules'' to clarify when shareholder approval will be required for plans adopted before the effective date of the proposed amendments. The basic structure of the rule as proposed has remained the same as originally submitted. While the Notice of the NYSE Proposal reflects the original format of the recommendations made by the Committee, stating a basic principle and including additional explanation and commentary, the NYSE states that it intended, through the proposed amendments to the rule text of section 303A(8) in NYSE Amendment No. 2 to write the rule language in a more ''plain-English'' format to enhance understanding of the rule.

1. Significant Changes From the Original Filing of the NYSE Proposal

The NYSE proposes to clarify the description of plans that are not equity compensation plans to expressly exclude plans that do not provide for delivery of equity securities of the issuer (*e.g.*, plans that pay in cash), and deferred compensation plans under which employees pay full current market value for deferred shares.

The NYSE proposes to modify the language of the rule to clarify that shareholder approval is required for pre-existing plans that were not approved by shareholders and that have neither an evergreen formula nor a specific number of shares available under the plan. However, the NYSE proposes to provide a transition period for requiring shareholder approval for such plans.[18] In addition, the NYSE has specified that, during the period prior to approval, the plan may be utilized, but only in a manner consistent with past practice.

In the section entitled ''Material Revisions,'' the NYSE proposes to more specifically define the concept of ''evergreen'' plans (*i.e.*, that contain a formula for automatic increases in the shares available) or ''formula'' plans[19] (*i.e.*, plans that provide for automatic grants pursuant to a formula), and proposes to introduce the concept of ''discretionary plans.'' Generally, a

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Nasdaq Amendment No. 3, Nasdaq did the following: (1) Replaced Nasdaq Amendment No. 2 in its entirety; (2) stated that on November 14, 2002, the Nasdaq Board of Directors approved, and that on December 9, 2002, the Board of Governors of the NASD reviewed, all remaining aspects of the Nasdaq proposal; and (3) made clarifying and conforming changes to the Nasdaq proposal in response to discussions with Commission staff and in response to the comment letters. As discussed below, Nasdaq Amendment No. 3, among other things, also clarified the term ''material amendment,'' proposed an exception to shareholder approval for plans that provide a way to purchase shares on the open market or from the issuer at fair market value, and discussed evergreen plans and repricings. For a more detailed description of Nasdaq Amendment No. 3, *see* Section II.B., *infra.*

[12] The NYSE proposal is part of the recommendations made by the NYSE's Corporate Accountability and Listing Standards Committee (''Committee''), a committee appointed by NYSE to review its corporate governance listing standards. The rest of the Committee's recommendations are in a separate rule filing, File No. SR–NYSE–2002–33. *See* Securities Exchange Act Release No. 47672, 68 FR 19051 (April 17, 2003) (published notice of SR–NYSE–2002–33).

[13] *See* Securities Exchange Act Release No. 41479 (June 4, 1999), 64 FR 31667 (June 11, 1999) (notice of filing and order granting accelerated approval, on a pilot basis, to File No. SR–NYSE–98–32). The Pilot was extended several times, most recently until June 30, 2003. *See* Securities Exchange Act Release No. 47409 (February 26, 2003), 68 FR 10560 (March 5, 2003) (File No. SR–NYSE–2003–04).

[14] *See* NYSE Amendment No. 2, *supra* note 6. *See also* Section II.A.1. and 2., *infra.*

[15] 26 U.S.C. 401(a).

[16] 26 U.S.C. 423.

[17] *See* NYSE Amendment No. 2, *supra* note 6. *See also* Section II.A.1. and 2., *infra.*

[18] *See* Section II.A.2., *infra.*

[19] Under the NYSE's rules, an increase or grant pursuant to an evergreen or formula plans would require shareholder approval for each increase or grant unless the plan has a term of not more than 10 years.

discretionary plan is a plan that contains no limit on the number of shares available and is not a formula plan. The NYSE proposes that each grant under such a discretionary plan will require shareholder approval regardless of whether the plan has a term of not more than 10 years. In addition, the NYSE represents that the proposed language under ''Transition Rules'' relating to evergreen plans clarifies that an evergreen plan that was approved by shareholders but that does not have a ten-year term must be: (1) Approved by shareholders before any shares that become available as a result of a formulaic increase are utilized, or (2) amended to include a term of no more than ten years from the date the plan was adopted or last approved by shareholders. If the plan were amended to include such term, shareholder approval would not be required. No action would be required, however, if a plan were frozen at the level of shares available at the time the rule becomes effective. The enumerated list of ''Material Revisions'' has also been revised to change the term ''changes the types of awards'' to ''expansion of the types of awards.'' The NYSE represents that no further substantive amendment to the definition of ''Material Revisions'' have been made.

The NYSE proposal has been amended to clarify that repricings that have commenced prior to the date of effectiveness of the proposal (*i.e.*, exchange offers to optionees) will not be subject to shareholder approval (assuming that such repricing did not require shareholder approval under existing NYSE rules).

The NYSE proposal has also been amended to clarify that inducement awards are available for rehires following a bona fide period of employment interruption. The NYSE further proposes to clarify that inducement awards include grants to new employees in connection with a merger or acquisition. In addition, the NYSE proposes to include a requirement that listed companies must provide prompt public disclosure following the grant of any inducement award in reliance on the exemption.[20]

With respect to the proposed exception for parallel nonqualified plans, the NYSE proposes to redesignate the exception as applying to ''parallel excess plans'' and proposes to add an additional condition relating to employer equity contributions that a plan must satisfy in order to be deemed a parallel excess plan.

[20] *See* Section II.A.2., *infra.*

The NYSE proposes to add a requirement that an issuer must notify the NYSE in writing when it uses any of the exemptions from the shareholder approval requirements.

The NYSE has not made any changes to the proposed amendments to NYSE Rule 452. The NYSE proposes, however, a transition period that will make the amended rule applicable only to shareholder meetings that occur on or after the 90th day following the date of the SEC order approving the amended rule. In addition, the NYSE proposes to make a conforming change to NYSE Rule 452 subsection .11(9) to reflect the amendments that are being proposed to NYSE Rule 452 subsection .11(12), and proposes to reflect the proposed amendments to NYSE Rule 452 in Section 402.08 of the NYSE's Listed Company Manual (''Giving a Proxy to Vote Stock''), which restates NYSE Rule 452 in part.

2. Amended New Section 303A(8) of the NYSE's Listed Company Manual

As amended by NYSE Amendments No. 1 and 2, proposed new section 303A(8) of the NYSE's Listed Company Manual will read as follows:

8. Shareholders must be given the opportunity to vote on all equity-compensation plans and material revisions thereto, with limited exemptions explained below.

Equity-compensation plans can help align shareholder and management interests, and equity-based awards are often very important components of employee compensation. To provide checks and balances on the potential dilution resulting from the process of earmarking shares to be used for equity-based awards, the Exchange requires that all equity-compensation plans, and any material revisions to the terms of such plans, be subject to shareholder approval, with the limited exemptions explained below.

Definition of Equity-Compensation Plan

An ''equity-compensation plan'' is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services. Even a compensatory grant of options or other equity securities that is not made under a plan is, nonetheless, an ''equity-compensation plan'' for these purposes.

However, the following are not ''equity-compensation plans'' even if the brokerage and other costs of the plan are paid for by the listed company:

- Plans that are made available to shareholders generally, such as a typical dividend reinvestment plan.
- Plans that merely allow employees, directors or other service providers to elect to buy shares on the open market or from the listed company for their current fair market value, regardless of whether:

—The shares are delivered immediately or on a deferred basis; or

—The payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions).

Material Revisions

A ''material revision'' of an equity-compensation plan includes (but is not limited to), the following:

- A material increase in the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction).

—If a plan contains a formula for automatic increases in the shares available (sometimes called an ''evergreen formula'') or for automatic grants pursuant to a formula, each such increase or grant will be considered a revision requiring shareholder approval unless the plan has a term of not more than ten years.

This type of plan (regardless of its term) is referred to below as a ''formula plan.'' Examples of automatic grants pursuant to a formula are (1) annual grants to directors of restricted stock having a certain dollar value, and (2) ''matching contributions,'' whereby stock is credited to a participant's account based upon the amount of compensation the participant elects to defer.

—If a plan contains no limit on the number of shares available and is not a formula plan, then each grant under the plan will require separate shareholder approval regardless of whether the plan has a term of not more than ten years.

This type of plan is referred to below as a ''discretionary plan.'' A requirement that grants be made out of treasury shares or repurchased shares will not, in itself, be considered a limit or pre-established formula so as to prevent a plan from being considered a discretionary plan.

- An expansion of the types of awards available under the plan.
- A material expansion of the class of employees, directors or other service providers eligible to participate in the plan.
- A material extension of the term of the plan.
- A material change to the method of determining the strike price of options under the plan.

—A change in the method of determining ''fair market value'' from

the closing price on the date of grant to the average of the high and low price on the date of grant is an example of a change that the Exchange would not view as material.

• The deletion or limitation of any provision prohibiting repricing of options. See the next section for details.

Note that an amendment will not be considered a ''material revision'' if it curtails rather than expands the scope of the plan in question.

Repricings

A plan that does not contain a provision that specifically *permits* repricing of options will be considered for purposes of this listing standard as *prohibiting* repricing. Accordingly any actual repricing of options will be considered a material revision of a plan even if the plan itself is not revised. This consideration will not apply to a repricing through an exchange offer that commenced before the date this listing standard became effective.

''Repricing'' means any of the following or any other action that has the same effect:

• Lowering the strike price of an option after it is granted.

• Any other action that is treated as a repricing under generally accepted accounting principles.

• Canceling an option at a time when its strike price exceeds the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

Exemptions

This listing standard does not require shareholder approval of employment inducement awards, certain grants, plans and amendments in the context of mergers and acquisitions, and certain specific types of plans, all as described below. However, these exempt grants, plans and amendments may be made only with the approval of the company's independent compensation committee or the approval of a majority of the company's independent directors. Companies must also notify the Exchange in writing when they use one of these exemptions.

Employment Inducement Awards

An employment inducement award is a grant of options or other equity-based compensation as a material inducement to a person or persons being hired by the listed company or any of its subsidiaries, or being rehired following a bona fide period of interruption of employment. Inducement awards include grants to new employees in connection with a merger or acquisition. Promptly following a grant of any inducement award in reliance on this exemption, the listed company must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.

Mergers and Acquisitions

Two exemptions apply in the context of corporate acquisitions and mergers.

First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity-compensation awards to reflect the transaction.

Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exemption applies to situations where a party that is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. A plan adopted in contemplation of the merger or acquisition transaction would not be considered ''pre-existing'' for purposes of this exemption.

Shares available under such a pre-existing plan may be used for post-transaction grants of options and other awards with respect to equity of the entity that is the listed company after the transaction, either under the pre-existing plan or another plan, without further shareholder approval, so long as:

• The number of shares available for grants is appropriately adjusted to reflect the transaction;

• The time during which those shares are available is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction; and

• The options and other awards are not granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or entities that were its subsidiaries immediately before the transaction.

Any shares reserved for listing in connection with a transaction pursuant to either of these exemptions would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock and thus required shareholder approval under Listed Company Manual Section 312.03(c).

These merger-related exemptions will not result in any increase in the aggregate potential dilution of the combined enterprise. Further, mergers or acquisitions are not routine occurrences, and are not likely to be abused. Therefore, the Exchange considers both of these exemptions to be consistent with the fundamental policy involved in this standard.

Qualified Plans, Parallel Excess Plans and Section 423 Plans

The following types of plans (and material revisions thereto) are exempt from the shareholder approval requirement:

• Plans intended to meet the requirements of Section 401(a) of the Internal Revenue Code [21] (*e.g.*, ESOPs);

• Plans intended to meet the requirements of Section 423 of the Internal Revenue Code;[22] and

• ''Parallel excess plans'' as defined below.

Section 401(a) plans and section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15%, are also required by the Internal Revenue Code to receive shareholder approval. While section 401(a) plans and parallel excess plans are not required to be approved by shareholders, U.S. GAAP requires that the shares issued under these plans be ''expensed'' (*i.e.*, treated as a compensation expense on the income statement) by the company issuing the shares.

An equity-compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable Section 401(a) plan, Section 423 plan or parallel excess plan that the listed company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.

The term ''parallel excess plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA'') [23] that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a) to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the

[21] 26 U.S.C. 401(a) (1988).

[22] 26 U.S.C. 423 (1988).

[23] 29 U.S.C. 1002 (1999).

amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. A plan will not be considered a parallel excess plan unless (1) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limits that may hereafter be enacted); (2) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limits described in the preceding sentence and the limitation described in clause (3); and (3) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

Transition Rules

Except as provided below, a plan that was adopted before the date of the Securities and Exchange Commission order approving this listing standard will not be subject to shareholder approval under this section unless and until it is materially revised.

In the case of a discretionary plan (as defined in ''Material Revisions'' above), whether or not previously approved by shareholders, additional grants may be made after the effective date of this listing standard without further shareholder approval only for a limited transition period, defined below, and then only in a manner consistent with past practice. See also ''Material Revisions'' above. In applying this rule, if a plan can be separated into a discretionary plan portion and a portion that is not discretionary, the non-discretionary portion of the plan can continue to be used separately, under the appropriate transition rule. For example, if a shareholder-approved plan permits both grants pursuant to a provision that makes available a specific number of shares, and grants pursuant to a provision authorizing the use of treasury shares without regard to the specific share limit, the former provision (but not the latter) may continue to be used after the transition period, under the general rule above.

Similarly, in the case of a formula plan (as defined in ''Material Revisions'' above) that either (1) has not previously been approved by shareholders or (2) does not have a term of ten years or less, additional grants may be made after the effective date of this listing standard without further shareholder approval only for a limited transition period, defined below.

The limited transition period described in the preceding two paragraphs will end upon the first to occur of:

- the listed company's next annual meeting at which directors are elected that occurs more than 180 days after the effective date of this listing standard;
- the first anniversary of the effective date of this listing standard; and
- the expiration of the plan.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the effective date of this listing standard, and would not itself be considered a ''material revision'' requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the effective date of this listing standard are made only from the shares available immediately before the effective date, in other words, based on formulaic increases that occurred prior to such effective date.

Broker Voting

In addition, the Exchange will preclude its member organizations from giving a proxy to vote on equity-compensation plans unless the beneficial owner of the shares has given voting instructions. This is codified in NYSE Rule 452. Amended Rule 452 will be effective for any meeting of shareholders that occurs on or after the 90th day following the date of the Securities and Exchange Commission order approving the rule change.

The NYSE will establish a working group to advise with respect to the need for, and design of, mechanisms to facilitate implementation of the proposal that brokers may not vote on equity-compensation plans presented to shareholders without instructions from the beneficial owners. This will not delay the effectiveness of the broker-may-not-vote proposal.

B. Nasdaq Proposal

Nasdaq proposes to amend NASD Rule 4350(i) to require shareholder approval for stock option plans or other equity compensation arrangements (subject to exceptions specified in the rule), adopt ''Interpretative Material'' pertaining to shareholder approval for stock option plans or other equity compensation arrangements, and to make related conforming changes to NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A).

Nasdaq Amendments No. 2 and 3 to the Nasdaq filing proposes a number of changes to the rules as they were published in the Notice of the Nasdaq Proposal. According to Nasdaq, these changes were made in response to the comment letters and discussions with Commission staff. The Nasdaq proposal, as amended by Nasdaq Amendments No. 2 and 3, is described below.

1. Nasdaq Proposal Amended by Nasdaq Amendments No. 2 and 3

Specifically, Nasdaq proposes to eliminate the exception for broadly-based plans, and also proposes to eliminate the *de minimis* exception to NASD Rule 4350(i)(1)(A), which allows for the grant of the lesser of 1% of the number of shares of common stock or 25,000 shares, without shareholder approval. Nasdaq believes that this exception is not in accord with the concept of restricting the use of unapproved options.

Nasdaq proposes to retain its current exception for warrants or rights offered generally to all shareholders. In Nasdaq Amendment No. 3, Nasdaq proposed an amendment to this exception to exclude stock purchase plans available on equal terms to all security holders of the company (such as a dividend reinvestment plan) from shareholder approval. In addition, the Nasdaq proposal would not require shareholder approval for tax qualified, non-discriminatory benefit plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. Along with tax qualified, non-discriminatory employee benefit plans, the Nasdaq proposal also provides an exception for parallel nonqualified plans. Nasdaq represents that the proposed amendments to NASD Rule 4350(i) would not have any effect on any shareholder approval or other requirements under the Internal Revenue Code or other applicable laws or requirements for such plans.

Furthermore, Nasdaq proposes to retain its current exception for inducement grants to new employees because Nasdaq believes that, in these cases, a company has an arm's length relationship with the new employees, and its interests are directly aligned with the shareholders. In Nasdaq Amendment No. 3, Nasdaq amended its proposal to apply this exception to persons previously employed by the issuer following a bona fide period of non-employment. In addition, Nasdaq states that, for these purposes, inducement grants would include grants

of options or stock to new employees in connection with a merger or acquisition.

In addition, the proposed amendments to NASD Rule 4350(i) would clarify that plans involving a merger or acquisition would not require shareholder approval in two situations. First, Nasdaq will not require shareholder approval to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, Nasdaq represents that shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. Nasdaq clarifies that this exception applies to situations where the target/acquired company, which is no longer a listed company following the transaction, has shares available for grant under its pre-existing plans that were previously approved by its shareholders. Nasdaq represents that these shares may be used for post-transaction grants of options and other equity awards by the acquiring/listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as: (1) The time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are only granted to individuals who were employed by the target/acquired company at the time the merger or acquisition was consummated. Nasdaq would view a plan adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. Nasdaq believes that this exception is appropriate because it believes that it will not result in any increase in the aggregate potential dilution of the combined enterprise.

Nasdaq states that, under the proposed amendments to the NASD Rule 4350(i), inducement grants, tax qualified, non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's compensation committee, or a majority of the issuer's independent directors. Nasdaq also notes that a company would not be permitted to use repurchased shares to fund options without prior shareholder approval. Nasdaq represents, however, that plans that merely provide a convenient way to purchase shares on the open market or from the issuer at fair market value would not require shareholder approval.

The Nasdaq proposal further clarifies that material amendments to plans would require shareholder approval. The accompanying proposed ''Interpretative Material'' also provides a non-exclusive list of plan amendments that are considered material, and clarifies that while general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would be required.[24] Certain provisions in a plan, however, cannot be amended without shareholder approval. For example, plans that contains a formula for automatic increases in the shares available or for automatic grants pursuant to a dollar-based formula cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. In addition, plans that impose no limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements. The proposed ''Interpretative Material'' also provides that as a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, Nasdaq recommends that plans meant to permit repricing use explicit terminology to make this clear.

With respect to implementation of the proposed amendments to NASD Rule 4350(i), Nasdaq proposes that amended NASD Rule 4350(i) become effective upon SEC approval, and that existing plans be grandfathered.[25] Nasdaq represents that any material modification to plans in place or adopted after the effective date of NASD Rule 4350(i) would require shareholder approval.

Separately, Nasdaq represents that Nasdaq staff intends to consider further changes to provide greater transparency to investors, including a possible disclosure requirement with respect to situations where an issuer relies upon an exception to the shareholder approval requirements of NASD Rule 4350(i)(1)(A).

Lastly, Nasdaq proposes to make conforming changes to NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A). These proposed changes will require issuers to notify Nasdaq on the appropriate form no later than 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval.

2. Amended NASD Rule 4350(i) and IM–4350–5

As amended by Nasdaq Amendments No. 2 and 3, NASD Rule 4350(i)(1)(A) and proposed new ''Interpretive Material,'' IM–4320–5, will read as follows:

(i) Shareholder Approval

(1) Each issuer shall require shareholder approval prior to the issuance of designated securities under subparagraph (A), (B), (C), or (D) below:

(A) when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended pursuant to which options or stock may be acquired by officers, directors, employees, or consultants, except for:

(i) warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a dividend reinvestment plan); or

(ii) tax qualified, non-discriminatory employee benefit plans (*e.g.*, plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the issuer's compensation committee or a majority of the issuer's independent directors; or plans that merely provide a convenient way to purchase shares on the open market or from the issuer at fair market value; or

(iii) plans or arrangements relating to an acquisition or merger as permitted under IM–4350–5; or

(iv) issuances to a person not previously an employee or director of the company, or following a bonafide period of non-employment, as an inducement material to the individual's entering into employment with the company, provided such issuances are approved by either the issuer's compensation committee comprised of a majority of independent directors or a

[24] The Commission notes that if a plan permits a specific action without further shareholder approval, it must be clear and specific enough to provide meaningful shareholder approval of those provisions.

[25] The Commission notes that the Nasdaq proposal does not address broker-dealer discretionary voting because NASD rules currently prohibit discretionary voting by broker-dealers without explicit instructions from the beneficial owner. In addition, the Commission notes that the Nasdaq proposal does not eliminate the ''treasury share exception'' because Nasdaq does not have such an exception under current NASD rules.

majority of the issuer's independent directors.

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IM–4350–5. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Employee ownership of company stock can be an effective tool to align employee interests with those of other shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing companies, or companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. As such, Rule 4350(i)(1)(A) ensures that shareholders have a voice in these situations, given this potential for dilution.

Rule 4350(i)(1)(A) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

(1) Any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(2) Any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(3) Any material expansion of the class of participants eligible to participate in the plan; and

(4) Any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an ''evergreen formula''), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that impose no limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 4350(i)(1)(A) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans [26] as these plans are regulated under the Internal Revenue Code and Treasury Department regulations.

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances must be approved by the issuer's compensation committee or a majority of the issuer's independent directors.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 4350(i)(1)(A). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) The time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. Nasdaq would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in a connection with a merger or acquisition would be counted by Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 4350(i)(1)(C).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's compensation committee comprised of a majority of independent directors, or a majority of the issuer's independent directors. It should also be noted that a company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

[26] The term ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) It covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

III. Summary of Comments

The Commission received a total of 32 comment letters on the NYSE and Nasdaq proposals.[27] Sixteen comment

[27] *See supra* notes 5 and 9.

letters generally supported the proposals requiring shareholder approval of all equity compensation plans based on the general premise that these proposals would improve corporate governance standards overall and would help restore investor confidence in the marketplace.[28] Several other commenters were supportive of certain aspects of the proposals, but expressed concerns about some or all of the exceptions in the proposed rules.[29] Five comment letters commented only on specific aspects of the NYSE and Nasdaq proposals.[30] Four comment letters stated that there should be a collective bargaining agreement exception.[31] Another comment letter supported shareholder approval solely for plans including senior executives and directors.[32] One comment letter stated that companies' compensation practices should not be micro-managed and that shareholder approval should be required only for plans that ''dilute (shareholder) ownership over a certain threshold (*e.g.*, 1% to 2%) or on plans where a potential for self dealing exists (*e.g.*, for top management and directors).'' [33] One comment letter found the proposals to be too complicated and stated that ''the better solution may be to eliminate stock options from a company's source of funds for employees.'' [34]

Thirteen comment letters supported the NYSE proposed rule change to preclude broker-dealers from casting proxy votes on equity compensation plans without instructions from the beneficial owner,[35] while three commenters opposed this provision.[36] Eleven of these commenters, supporting the elimination of broker voting on equity compensation plans, suggested precluding broker-dealers from voting proxies without instructions on all other matters as well.[37] In addition, several commenters also supported the NYSE proposed rule change that would eliminate the ''treasury share exception.'' [38]

A. Exceptions to Shareholder Approval of Equity Compensation Plans

Several commenters, while agreeing with the general concept of shareholder approval for all equity compensation plans, had concerns with various exceptions for the general requirement [39] and some believed that the exceptions should be removed from the proposed rules.[40]

1. Exception for Inducements Grants

Several commenters were critical of the exception from the shareholder approval requirement for inducement options offered in an arms-length transaction.[41] One commenter, who commented separately on the NYSE and Nasdaq proposals, stated that this exception could have the effect of encouraging the use of inducement grants simply to avoid having to acquire shareholder approval to issue shares, and that this exception should therefore be limited.[42] Another commenter stated that such an exception invites companies to offer huge one-time awards of options to incoming executives.[43] One commenter, stated that there should not be an exception for inducement awards from shareholder approval, but noted that companies should anticipate the hiring of new executives and have a ''cushion of shares available for awards under existing shareholder-approved plans.'' [44] This commenter was concerned that an exception for inducement awards would provide an incentive for management to move between companies to take advantage of the exception in obtaining larger option awards.[45] Another commenter suggested that the exception should also be made available to individuals who are rehired by an issuer or one of its subsidiaries after a bona fide interruption of employment.'' [46] One commenter suggested that Nasdaq conform its proposal to the NYSE proposal and permit the issuance of inducement awards to persons who were previously employees of or served on the board of directors of the issuer.[47]

2. Exception for Mergers and Acquisitions

Several commenters were generally critical of the exception from the shareholder approval requirement for plans acquired in an acquisition or merger.[48] These commenters specifically opposed the exception for shares available to employees of the acquired or targeted company, stating that such additional issuances could be dilutive to the shareholders of the acquiring company. Two commenters suggested that this exception could have ''the unintended consequence of making the availability of shares authorized under assumed plans dependent on the transaction structure.'' [49] Another commenter argued that the exception could allow management to ''use a merger or acquisition to 'adopt' a plan that otherwise would not be approved by their shareholders.'' [50]

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[28] *See* TIAA-CREF Letter; Barclays Letter; Allen & Overy Letter; SWIB Letter; Hermes Letter; ICI Letter; NJ Division Letter; ISS I Letter; ISS II Letter; NVCA I Letter; NVCA II Letter; LACERA Letter; conEdison Letter; Unisys Letter; Employees Retirement System of Texas Letter; and Gillespie Letter. As discussed below, some of these commenters, while supporting the overall proposals, recommended eliminating or changing some of the exceptions to shareholder approval or requested clarification.

[29] *See* CII Letter; SWIB Letter; CPF Letter; IBT Letter; STRS Letter; MSRS Letter; and Employees Retirement System of Texas Letter.

[30] *See* CalPERS Letter; Sullivan & Cromwell Letter; ABA Letter; Radioshack Letter; and ABC Letter.

[31] *See* Southwest Airlines Letter; IAM Letter; AFL-CIO Letter; and IBT Letter. For example, see Southwest Airlines Letter, stating that the NYSE shareholder approval proposal is overly broad as currently drafted and that it would be ''unwise'' and ''unfair'' to approve unless a collective bargaining exception is added to the exceptions.

[32] *See* AFL–CIO Letter.

[33] *See* Employees Retirement System of Texas Letter.

[34] *See* Pella Letter.

[35] *See* TIAA–CREF Letter; CII Letter; Barclays Letter; SWIB Letter; Hermes Letter; AFL-CIO Letter; CPF Letter; STRS Letter; NJ Division Letter; ISS I Letter; IBT letter; MSRS Letter; and Employees Retirement System of Texas Letter. As noted above, NASD rules already prohibit broker-dealer discretionary voting on such matters. *See supra* note .

[36] *See* ABC Letter; Pella Letter; Amex I Letter; and Amex II Letter. The Commission considers the Amex I Letter and Amex II Letter to be from the same commenter.

[37] *See* CII Letter; SWIB Letter; Hermes Letter; AFL-CIO Letter; CPF Letter; STRS Letter; NJ Division Letter; ISS I Letter; IBT Letter; MSRS Letter; and Employees Retirement System of Texas Letter.

[38] *See* CII Letter; Barclays Letter; SWIB Letter; Hermes Letter; CPF Letter; STRS Letter; NJ Division Letter; Unisys Letter; and Employees Retirement System of Texas Letter.

[39] *See* CII Letter; Barclays Letter; SWIB Letter; Hermes Letter; AFL–CIO Letter; CPF Letter; STRS Letter; LACERA Letter; Unisys Letter; and Employees Retirement System of Texas Letter.

[40] *See* Barclays Letter; SWIB Letter; Hermes Letter; and LACERA Letter.

[41] *See* CII Letter; Barclays Letter; SWIB Letter; Hermes Letter; CalPERS Letter; STRS Letter; NJ Division Letter; ISS I Letter; ISS II Letter; Unisys Letter; and Employees Retirement System of Texas Letter.

[42] *See* ISS I Letter and ISS II Letter.

[43] *See* Hermes Letter. See also AFL-CIO Letter, which refers to inducement grants as ''golden handshake'' compensation packages for newly recruited executives.

[44] *See* CalPERS Letter. Two other commenters recommended that companies plan in advance for these situations and set aside shares of stock for this specific purpose with shareholder approval. *See* IBT Letter and Employees Retirement System of Texas Letter.

[45] *See* CalPERS Letter.

[46] *See* Allen & Overy Letter. This commenter stated that Nasdaq should be also permit inducement grants to an independent director who is hired as an employee of an issuer or one of its subsidiaries.

[47] *See* ABA Letter.

[48] *See* CII Letter; Barclays Letter; SWIB Letter; AFL-CIO Letter; CalPERS Letter; STRS Letter; NJ Division Letter; ISS I Letter; ISS II Letter; Unisys Letter; and Employees Retirement System of Texas Letter.

[49] *See* Allen & Overy Letter and NJ Division Letter.

[50] *See* Employees Retirement System of Texas Letter.

3. Exception for Tax Qualified and Parallel Nonqualified Plans

Several commenters were generally critical of the exception from the shareholder approval requirement for tax qualified and parallel nonqualified plans.[51] These commenters stated that shareholder oversight was necessary for tax qualified and parallel non-qualified plans. In addition, commenters noted that the exception for parallel nonqualified plans may result in a potential for abuse because participants in these plans could defer up to 100 percent of their compensation into stock if the plan allowed such deferrals before the application of tax limits.[52] Commenters further noted that parallel nonqualified plans are structured solely to benefit highly compensated employees and, therefore, should be subject to shareholder approval.[53] One commenter stated that ''the fact that such plans are expensed is not a valid reason to exempt them from the shareholder approval process.'' [54] Two commenters stated that the definition of parallel nonqualified plan should be similar to the definition of ''excess benefit plan'' under Rule 16b-3 of the Act.[55] Another commenter stated that requiring non-parallel plans to be substantially similar to tax qualified plans is too narrow and restrictive a standard.[56] One commenter suggested the use of ''stock purchase plans'' as defined in Rule 16b-3(b)(5) under the Act, stating that this definition should replace the reference to Section 423 plans under this exception.[57] One commenter suggested that the exception for tax qualified and parallel nonqualified plans should be extended to cover employee stock option purchase plans that would qualify as noncompensatory plans under APB Opinion 25 of the Financial Accounting Standards Board.[58]

4. Material Revisions to Plans

Several commenters suggested that the NYSE and Nasdaq define ''material'' for purposes of defining major changes to an equity compensation plan.[59] One commenter stated that Nasdaq should adopt the NYSE's list of what is considered a ''material revision.'' [60] Another commenter suggested that the NYSE follow Nasdaq's approach by defining ''materiality'' ''by reference to former Rule 16b-3 under the Act.'' [61] One commenter suggested adopting a ''global standard'' and providing a ''transparent definition of materiality'' to ensure that issues regarding materiality are handled similarly by the NYSE and Nasdaq.[62] Another commenter, while supporting a uniform definition, objected to the use of ''materiality,'' stating that the concept is too vague and subjective.[63] Another commenter suggested that the definition of ''material'' should be more specific to ensure that companies have a practical and enforceable standard that they can apply.[64] One commenter, separately commenting on both of the NYSE and Nasdaq proposals, suggested that, because it is difficult to determine what types of changes qualify as material, the Commission should require the NYSE and Nasdaq to separately publish, on a website in real time, determinations of all their staff determinations on requests for exemptions from the their rules and listing standards.[65] One commenter stated that the definition of ''material revision'' of an equity compensation plan should be clarified so as not to include any decreases in any benefits under the plan, and thereby subject only material increases, to any benefits under a plan, to shareholder approval.[66]

5. Repricing of Plans

Several commenters suggested that Nasdaq should address the issue of repricing, and that it should adopt the NYSE's approach for such repricing provisions in equity compensation plans.[67] Under the NYSE proposal, unless a plan explicitly contains a repricing provision, shareholder approval would be required for any revisions deleting or limiting the repricing provisions; a plan that is silent on repricing would also require shareholder approval in these instances. One commenter, commenting solely on the NYSE proposal, stated that shareholder approval should not be required for plans that are silent on repricing.[68] Another commenter suggested that repricing should only be considered a ''material revision'' of a plan for newly adopted plans or for plans that were materially revised after the effective date of the NYSE proposal.[69]

6. Foreign Exemption

Two commenters suggested that the exemption for plans covering employees residing in non-U.S. jurisdictions should also apply to plans that are designed to comply with local foreign tax laws and under which all full-time employees of the sponsoring entity are, in general, eligible to participate subject to certain service, age or other requirements permitted under the foreign jurisdiction's law.[70] Both commenters stated that Nasdaq should adopt a similar exemption.[71] One commenter stated that a transition period should be provided for plans of listed domestic issuers and their affiliates covering employees residing in a non-U.S. jurisdiction.[72]

B. Collective Bargaining Agreements

Four commenters suggested that there be an exception for the shareholder requirement for equity compensation plans for plans entered into pursuant to a collective bargaining agreement.[73] Two of the commenters limited this suggestion to collective bargaining agreements that do not permit participation by officers and directors.[74] Three of the commenters argued that proposed rules are overly-broad, would significantly impact the collective bargaining process, and provide disincentives for parties on both sides of the bargaining table to negotiate equity compensation plans.[75] One commenter stated that a shareholder approval requirement would deny employees, who have given up pay raises for a number of years over the term of the collective bargaining agreement in order to receive stock options, the opportunity to participate fully in the growth and success of their companies.[76]

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[51] *See* CII Letter; Barclays Letter; SWIB Letter; CalPERS Letter; STRS Letter; ISS I Letter; ISS II Letter; Unisys Letter; and Employees Retirement System of Texas Letter.

[52] *See* CII Letter; AFL–CIO Letter; CalPERS Letter; STRS Letter; and Unisys Letter.

[53] *See* CII Letter; SWIB Letter; CalPERS Letter; STRS Letter; and Unisys Letter.

[54] *See* Employees Retirement System of Texas Letter.

[55] *See* Sullivan & Cromwell Letter and ABA Letter.

[56] *See* RadioShack Letter.

[57] *See* ABA Letter.

[58] *See* Allen & Overy Letter.

[59] *See* CII Letter; STRS Letter; Sullivan & Cromwell Letter; ABA Letter; and Unisys Letter.

[60] *See* ISS II Letter.

[61] *See* Sullivan & Cromwell Letter.

[62] *See* AFL–CIO Letter.

[63] *See* CalPERS Letter.

[64] *See* IBT Letter.

[65] *See* ISS I Letter and ISS II Letter.

[66] *See* RadioShack Letter.

[67] *See* CII Letter; SWIB Letter; Hermes Letter; ICI Letter; CalPERS Letter; STRS Letter; NJ Division Letter; and Unisys Letter.

[68] *See* Sullivan & Cromwell Letter.

[69] *See* ABA Letter.

[70] *See* Allen & Overy Letter and ABA Letter.

[71] *See* Allen & Overy Letter and ABA Letter.

[72] *See* ABA Letter.

[73] *See* Southwest Airlines Letter; IAM Letter; AFL–CIO Letter; and IBT Letter.

[74] *See* Southwest Airlines Letter and IBT Letter.

[75] *See* Southwest Airlines Letter; IAM Letter and AFL–CIO Letter.

[76] *See* Southwest Airlines Letter.

C. Evergreen Plans

One commenter stated that ''evergreen plans'' can be dilutive to shareholders because ''there can be no termination date for the plans and the number of shares issued can increase annually depending on the number of shares outstanding.'' [77] The commenter urged the NYSE and Nasdaq to view increases in the shares available under an evergreen plan to be a material revision requiring shareholder approval.[78] One commenter, commenting solely on the NYSE proposal, requested clarification on whether, for evergreen plans, the 10-year maximum term for the plan runs from the effective date of the proposed rule, the date of the addition of the 10-year term, or the date of the original adoption or shareholder approval of the plan.[79] Two commenters stated that a transition period—not requiring shareholder approval until the next annual shareholder meeting—should apply to existing evergreen plans.[80] One commenter stated that there should be a ''specific transition period for plans adopted before the effective date that do not limit the number of shares available for grant, since these plans will never be required to be amended to increase the number of authorized share.'' [81] Another commenter suggested that evergreen increases should not be considered ''material revisions'' until the earliest of: (1) A subsequent material revision to the plan; (2) the expiration of the term of the plan; (3) the later of ten years from the date the plan was adopted or five years from the effective date of the NYSE proposal.[82] The same commenter recommended that Nasdaq conform its proposal to the NYSE proposal with respect to provisions on the treatment of evergreen plans.[83] One commenter stated that a ''retroactive shareholder approval requirement'' should not be applied to existing evergreen plans.[84] Another commenter requested clarification on whether an evergreen plan that was previously approved by a company's shareholders must again be approved by the shareholders if it is for an unlimited term and has been in existence for more than ten years.[85]

D. Conformity and Clarity

A few commenters stated that the NYSE and Nasdaq proposals should be consistent with one another.[86] One commenter recommended specific changes to clarify and conform the NYSE and Nasdaq proposals.[87] Another commenter suggested that the NYSE and Nasdaq clarify the proposed rules to indicate that cash-only plans and benefits would not be subject to shareholder approval.[88] One commenter stated that the NYSE and Nasdaq should harmonize their proposals on the ''repricing'' issue; the commenter did not take a position on which approach it believed was more appropriate.[89] The same commenter suggested that ''the NYSE proposal, like the Nasdaq proposal, should specify the significant and substantive components of its (proposed) rule in the rule's text'' rather than in a commentary or footnotes.[90] One commenter praised the NYSE and Nasdaq for proposing similar rules requiring shareholder approval of equity compensation plans, stating that this ''coordinated approach ensures that the NYSE and Nasdaq do not compete on the basis of differences in their rules, encouraging a ''race to the bottom'' to attract new listings, to the detriment of investors.'' [91]

E. Elimination of Broker-Dealer Voting on Equity Compensation Plans

Several commenters also supported the NYSE proposed rule change to preclude broker-dealers from voting on equity compensation plans without instructions from the beneficial owner.[92] Some of these commenters stated that broker-dealers should be precluded from voting proxies without instructions on all other matters as well.[93] Some of these commenters stated that votes should be cast by the beneficial owners—the real parties in interest—and not broker-dealers who tend to side with management and override their clients' interests.[94] Other commenters pointed out that, because companies now routinely receive votes from more than 50 percent of their beneficial owners, broker-dealer votes are no longer necessary to meet quorum requirements.[95] One commenter stated that ''this rule is unnecessary in an age where shareholders can vote electronically by telephone, Internet, and facsimile, in addition to the traditional means of written proxy or participation in shareholder meetings.'' [96] One commenter stated that the NYSE should specify when the proposed new rule eliminating broker voting of equity compensation plans will become effective and stated that a transition period should be provided.[97]

Three commenters opposed the NYSE proposal to eliminate broker-dealer proxy voting on equity compensation plans.[98] Two of these commenters stated that the elimination of broker voting would harm smaller issuers and result in a significant increase in cost and administrative burden.[99] In addition, one commenter stated that elimination of broker-dealer voting on equity compensation plans, and thereby designating such plans as ''non-routine'' for proxy voting purposes, would result in uncertainty of whether there will be a quorum and, instead suggested as an alternative that unvoted broker held shares be deemed voted in proportion to the votes actually cast (*i.e.*, ''echo'' voting).[100] The commenter further stated that, while the issue of broker-dealer voting should be addresses on an industry-wide basis, it wanted clarification that the NYSE's elimination of broker-dealer voting on equity compensation plans only applied to NYSE listed issuers '' and not to Amex listed issuers '' in case of a conflict in proxy voting rules of the two exchanges.[101] One commenter stated that the average beneficial owner would not understand or know how to vote on his or her own.[102]

F. Miscellaneous Comments

A few commenters suggested that the Commission urge the American Stock

[77] *See* ICI Letter.

[78] *See* ICI Letter.

[79] *See* Sullivan & Cromwell Letter.

[80] *See* Sullivan & Cromwell Letter and conEdsion Letter.

[81] *See* Allen & Overy Letter.

[82] *See* ABA Letter.

[83] *See* ABA Letter.

[84] *See* RadioShack Letter.

[85] *See* Unisys Letter. This commenter suggested a transition period until the next annual shareholder meeting to obtain shareholder approval if it is required in these circumstances.

[86] *See* AFL–CIO Letter; Allen & Overy Letter; ICI Letter; and ABA Letter.

[87] *See* ABA Letter.

[88] *See* Allen & Overy Letter.

[89] *See* ABA Letter.

[90] *See* ABA Letter.

[91] *See* ICI Letter.

[92] *See* TIAA–CREF Letter; CII Letter; Barclays Letter; SWIB Letter; Hermes Letter; AFL–CIO Letter; CPF Letter; STRS Letter; NJ Division Letter; ISS I Letter; IBT letter; MSRS Letter; and Employees Retirement System of Texas Letter.

[93] *See* CII Letter; SWIB Letter; Hermes Letter; AFL–CIO Letter; CPF Letter; STRS Letter; NJ Division Letter; ISS I Letter; IBT Letter; MSRS Letter; and Employees Retirement System of Texas Letter.

[94] *See* TIAA–CREF Letter; CII Letter; SWIB Letter; Hermes Letter; AFL-CIO Letter; CPF Letter; STRS Letter; ISS I Letter; IBT Letter; MSRS Letter; and Employees Retirement System of Texas Letter.

[95] *See* CII Letter; SWIB Letter; CPF Letter; STRS Letter; IBT Letter; and MSRS Letter. One commenter stated that, if uninstructed broker-dealer votes are needed to meet a quorum, broker voting should be limited solely to quorum votes. *See* ISS I Letter.

[96] *See* AFL–CIO Letter.

[97] *See* ABA Letter.

[98] *See* ABC Letter; Pella Letter; Amex I Letter; and Amex II Letter.

[99] *See* ABC Letter and Amex I Letter.

[100] *See* Amex I Letter.

[101] *See* Amex I Letter and Amex II Letter.

[102] *See* Pella Letter.

Exchange, LLC (''Amex'') to propose and adopt listing standards similar to the NYSE and Nasdaq proposals.[103] One commenter, commenting solely on the NYSE proposal, stated that the shareholder approval requirement should apply only to companies listing common stock on the NYSE.[104] The same commenter stated that NYSE should state that the requirement of shareholder approval would not apply to ''cash-only'' plans and other plans where securities are not deliverable.[105] The commenter also stated that plans adopted after the effective date of the proposed rule but before the company's stock is listed on the NYSE should also be grandfathered.'' [106] The commenter further stated that compensation committee pre-approval of certain exceptions to shareholder approval, such as for inducement grants and tax qualified plans, is unnecessary and impractical.[107] One commenter stated that NYSE should define ''equity compensation plan.'' [108] The same commenter stated that the NYSE should specify when the proposed amendments to the NYSE Rule 452 eliminating broker voting on plans would become effective and suggested that there be a transition period.[109] One commenter, commenting solely on the NYSE proposal, stated that there should be an implementation period for obtaining shareholder approval for plans that are not pre-existing plans that will become ''grandfathered'' upon approval of the NYSE proposal.[110] One commenter stated that ''compensatory discount stock purchase plans'' should not be subject to shareholder approval because this requirement would unduly restrict the management's design of long-standing compensation plans for a broad base of employees, while providing minimal benefit to shareholders.[111] Some commenters stated that the 21-day comment period was inadequate to obtain public comment on these and other proposals.[112]

[103] *See* CII Letter; SWIB Letter; STRS Letter; NJ Division Letter; and Unisys Letter. In response to a Commission request, the Amex filed a proposed rule change on May 6, 2003, which proposes to require shareholder approval of stock option and equity compensation plans. *See* File No. SR–Amex–2003–42.

[104] *See* Sullivan & Cromwell Letter.

[105] *See* Sullivan & Cromwell Letter.

[106] *See* Sullivan & Cromwell Letter.

[107] *See* Sullivan & Cromwell Letter.

[108] *See* ABA Letter.

[109] *See* ABA Letter.

[110] *See* conEdison Letter.

[111] *See* RadioShack Letter.

[112] *See* CII Letter; CPF Letter; CalPERS Letter; STRS Letter; IBT Letter; and MSRS Letter.

IV. Discussion

After careful review, the Commission finds that the NYSE proposal, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[113] Specifically, the Commission finds that approval of the NYSE proposal, as amended, is consistent with section 6(b)(5) of the Act [114] in that it is designed to, among other things, facilitate transactions in securities; 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 a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

In addition, after careful review, the Commission finds that the Nasdaq proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[115] The Commission finds that the Nasdaq proposal, as amended, is consistent with provisions of section 15A of the Act,[116] in general, and with section 15A(b)(6) of the Act,[117] in particular, in that it is designed to, among other things, facilitate transactions in securities; 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 a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

The Commission has long encouraged exchanges to adopt and strengthen their corporate governance listing standards in order to, among other things, restore investor confidence in the national marketplace. The Commission believes that the NYSE proposal and the Nasdaq proposal, which require shareholder approval of equity compensation plans, are the first step under this directive because they should have the effect of safeguarding the interests of shareholders, while placing certain restrictions on their listed companies. The Commission notes that many commenters generally supported the NYSE and Nasdaq's proposals to require shareholder approval of all equity compensation plans mainly based on the premise that such a requirement would protect shareholders and overall improve the marketplace. The Commission further notes that several commenters, while supporting the general shareholder approval requirement, voiced concerns regarding certain or all of the exemptions to, and certain aspects of, the shareholder approval requirement. Accordingly, the NYSE and Nasdaq amended their proposals to: (1) Respond to specific concerns raised by the commenters and suggestions made by Commission staff; (2) clarify terms and language used in their respective proposals; and (3) harmonize and conform their respective rule proposals, in response to certain comments, so that they are more consistent with one another.

A. Exemption From Shareholder Approval for Inducement Grants

The Commission notes that several commenters were critical of the exemption from shareholder approval for inducement grants that could be made to recruit new employees. These commenters were generally concerned that the exemption could potentially lead to abuse and could be used to avoid shareholder approval. The commenters suggested either eliminating or limiting the exemption for inducement grants.

The Commission believes that the requirement that the issuance of all inducement grants be subject to review by either the issuer's independent compensation committee or a majority of the board's independent directors, in both proposals, should prevent abuse of this exemption. The Commission notes that the NYSE has also amended its proposal to include a requirement that, following the grant of any inducement award, companies must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.[118] In addition, the

[113] 15 U.S.C. 78f(b). In approving the NYSE proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[114] 15 U.S.C. 78f(b)(5).

[115] In approving the Nasdaq proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[116] 15 U.S.C. 78*o*–3.

[117] 15 U.S.C. 78*o*–3(b)(6).

[118] This disclosure would, of course, be in addition to any information that is required to be disclosed in annual reports filed with the Commission. For example, Item 201(d) of Regulation S–K (17 CFR 229.201(d)) and Item 201(d) of Regulation S–B (17 CFR 228.201(d)) require issuers to present—in their annual reports on Form 10–K or Form 10–KSB—separate, tabular disclosure concerning equity compensation plans that have been approved by shareholders and equity compensation plans that have not been approved by shareholders.

Commission notes that the NYSE proposes an additional requirement that an issuer must notify it in writing when it uses this exemption from the shareholder approval requirement. Nasdaq has also committed to considering similar disclosure requirements. The Commission believes that such disclosure requirements would provide transparency to investors and reduce the potential for abuse of this exemption for inducement grants.[119]

In addition, one commenter pointed out an inconsistency between the NYSE and Nasdaq proposals—that the exemption for inducement grants as proposed in the Notice of the Nasdaq Proposal would exclude grants to previous employees and directors of the company, while the exemption for inducement grants as proposed in the Notice of the NYSE Proposal would allow grants to all new employees. In response to these concerns, the NYSE and Nasdaq clarified their respective exemptions for inducement grants and limited the exemptions to new employees or to previous employees being rehired after a bona fide period of interruption of employment, and to new employees in connection with an acquisition or merger. The Commission believes that these amendments to the exemption for inducement grants in the NYSE and Nasdaq proposals are consistent with the original intent of the exemption. The language requiring a bone fide period of interruption of employment for previous employees should help to prevent the inducement exemption from being used inappropriately. Furthermore, the proposed changes should address the commenters' concerns about consistency between the NYSE and Nasdaq proposals.

B. Exemption From Shareholder Approval for Mergers and Acquisitions

The Commission notes that several commenters objected to an exemption from shareholder approval for plans acquired in a merger or acquisition. These commenters stated that additional issuances under plans to shareholders of the acquired or targeted company could be dilutive to shareholders of the acquiring company. The commenters were also concerned that companies could use a merger or acquisition to acquire a plan that would otherwise not be approved by their shareholders.

While the Commission understands these concerns, it notes that both the NYSE and Nasdaq exemptions contain safeguards that should prevent abuse in this area. First, only pre-existing plans that were previously approved by the acquired company's shareholders would be available to the listed company for post-transactional grants. In addition, shares under those previously approved plans could not be granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or its subsidiaries. The Commission also notes that, under both the NYSE and Nasdaq proposals, any shares reserved for listing in connection with a merger or acquisition pursuant to this exemption would be counted by the NYSE and Nasdaq in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thereby requiring shareholder approval under the appropriate NYSE and Nasdaq rules. Finally, the Commission notes that the NYSE proposes an additional requirement that an issuer must notify it in writing when it uses this exemption from the shareholder approval requirement. Based on the above, the Commission believes that the NYSE and Nasdaq have provided measures to ensure that the exemption for mergers and acquisitions is only used in limited circumstances, which should help reduce the potential for dilution of shareholder interests.

C. Exemption From Shareholder Approval for Tax Qualified and Parallel Nonqualified Plans

Several commenters were critical of the exemption from shareholder approval for tax qualified and parallel nonqualified plans[120] and stated that these plans should be subject to shareholder approval. Many of these commenters were concerned that these types of plans are structured in a way to benefit only highly compensated employees and that participants in such plans could defer up to 100% of their compensation in stock under these plans.

The Commission believes that, given the extensive government regulation—the Internal Revenue Code and Treasury regulations—for qualified plans and the general limitations associated with parallel nonqualified plans, shareholders should not experience significant dilution as a result of this exemption. In addition, the Commission notes that NYSE and Nasdaq are proposing to add an additional limitation under this exemption that a plan would not be considered a nonqualified parallel under the Nasdaq proposal or parallel excess plan under the NYSE proposal if employees who are participants in such plans receive employer contributions under the plans in excess of 25% of the participants' cash contributions. The Commission further notes that the NYSE proposes an additional requirement that an issuer must notify it in writing when it uses this exemption from the shareholder approval requirement. The Commission believes that, taken together, these limitations should reduce concerns regarding abuse of this exemption.

D. Material Amendments to Plans

The Commission notes that several commenters urged the NYSE and Nasdaq to adopt a similar definition for what constitutes a material amendment or revision to a plan requiring shareholder approval. Specifically, these commenters stated that the NYSE and Nasdaq should adopt a more uniform and enforceable definition. One commenter suggested that material revisions to plans should only include any increases in benefits, not decreases in benefits, under a plan.

In response to these concerns, the NYSE and Nasdaq have proposed amendments to their respective proposals and provided similar definitions of a material amendment or revision. A material amendment or revision under both proposals would now basically include: A material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction); an expansion of the type of awards available under the plan; a material expansion of the class of participants eligible to participate in the plan; a material extension of the term of the plan; a material change to limit or delete any provisions prohibiting repricing of options in a plan or for determining the strike or exercise price of options under a plan. In addition, the NYSE amended its proposal under ''Material Revisions'' to define ''evergreen'' and ''formula'' plans and introduced the new concept of ''discretionary plan.'' The NYSE further described what would constitute a material revision to such plans and require shareholder approval. Nasdaq also amended its proposal to clarify when plans containing a formula for automatic increases (such as evergreen plans) and automatic grants would require shareholder approval.

The Commission believes that the NYSE and Nasdaq's non-exclusive lists

[119] The Commission urges Nasdaq to consider adopting a disclosure requirement similar to the NYSE's requirement.

[120] The Commission notes that the NYSE has replaced the term ''parallel nonqualified plan'' in its proposal with the term ''parallel excess plan.'' Nasdaq has retained the term ''parallel nonqualified plan'' to describe such plans.

of what would constitute a material amendment or revision to a plan provides companies with clarity and guidance for when certain amendments to plans would require shareholder approval. The Commission also believes that the NYSE and Nasdaq proposed amendments in this area should help to ensure that the concept of material amendments or revisions between their respective proposals is consistent with each other so that differences between the markets cannot be abused.

E. Repricing of Plans

A minority of commenters suggested that Nasdaq should address the issue of the repricing of options in plans and adopt the NYSE's approach to this issue. The NYSE proposal provides that, if a plan explicitly contains a repricing provision, shareholder approval would be required to delete or limit the repricing provisions. In addition, the NYSE proposal provides that, if a plan is silent on repricing, it will be considered as prohibiting repricing and shareholder approval would be required to permit repricing under the plan. In response to the commenters' concerns on this issue, Nasdaq proposed amendments to its proposal to state that it would be considered a material amendment to a plan requiring shareholder approval if the plan was amended to permit repricing. In addition, Nasdaq recommended in its proposed amendments that plans meant to permit repricing should explicitly and clearly state that repricing is permitted. The NYSE proposed an amendment to its proposal to clarify that repricings that have commenced prior to the date of effectiveness of its proposal would not be subject to shareholder approval, provided that such repricing does not require shareholder approval under the NYSE's existing shareholder approval rules.

The NYSE and Nasdaq proposals, as amended, should benefit shareholders by ensuring that companies cannot do a repricing of options, which can have a dilutive effect on shares, without explicit shareholder approval of such provisions and their terms. The Commission also believes that NYSE and Nasdaq proposals now provide similar views in the area of repricing and should offer companies clarity and guidance as to when a change in a plan regarding the repricing of options would trigger a shareholder approval requirement and addresses commenters' concerns in this area.

F. Evergreen or Formula Plans and Discretionary Plans

A minority of commenters raised concerns about plans containing evergreen formulas, which would allow for automatic increases in the number of shares available or for automatic grants pursuant to a formula in the plans. These commenters were generally concerned about evergreen/formula plans that provided no termination date and that did not place a limit on the number of shares that could be issued. The commenters wanted the NYSE and Nasdaq to consider increases in the number of shares under such plans as material revisions to the plans requiring shareholder approval. In addition, some of these commenters suggested that the NYSE and Nasdaq provide a transition period for existing evergreen/formula plans to comply with the new shareholder approval requirements. Some commenters wanted more clarity as to when shareholder approval would be required for evergreen/formula plans that were adopted prior to the effective date of the NYSE and Nasdaq proposals, and one commenter suggested that Nasdaq adopt NYSE's approach to evergreen/formula plans.

The Commission notes that both the NYSE and Nasdaq have proposed amendments to the respective proposals in response to commenters' concerns and are proposing similar approaches as to the treatment of evergreen/formula plans. More specifically, under both the NYSE and Nasdaq proposals, if a plan contains a formula for automatic increases in the shares available or for automatic grants pursuant to a formula, each increase or grant will require shareholder approval unless the plan has a term of not more than ten years. In addition, under both the NYSE and Nasdaq proposals, if a plan contains no limit on the number of shares available and is not a formula plan (the NYSE amended its proposal to refer to such plans as ''discretionary plans''), then each grant under the plan will require separate shareholder approval. Furthermore, both the NYSE and Nasdaq proposals provide that a requirement that grants be made out of treasury or repurchased shares will not alleviate the need for shareholder approval for additional grants.

The Commission believes that these provisions should help to ensure that certain terms of a plan cannot be drafted so broad as to avoid shareholder scrutiny and approval. The Commission also notes that the NYSE and Nasdaq's conforming rules relating to the treatment of evergreen/formula and discretionary plans should provide more clarity and transparency to issuers as to when shareholder approval would be required for such plans.

The Commission further notes that the NYSE has proposed amendments to its proposal to provide for a transition period for evergreen/formula plans and discretionary plans. The limited transition period would end on the first to occur of the following: (1) The listed company's next annual meeting at which directors are elected that occurs more than 180 days after the date of the effective date of the NYSE proposal; (2) the first anniversary of the effective date of the NYSE proposal; or (3) the expiration of the plan. The Commission believes that the NYSE's proposed transition period for evergreen/formula and discretionary plans should provide companies with additional clarity and guidance as to when shareholder approval would be required for such plans while in the transition period, and should provide companies with more time to comply with the new NYSE shareholder approval requirements for evergreen/formula type plans. The Commission believes that this period is not so long as to permit abuse of the shareholder approval requirement, and at most, will last one year from the date of this Commission approval order.

G. Miscellaneous Concerns

Some commenters had suggested that there should be an exemption from shareholder approval for plans entered into pursuant to a collective bargaining agreement mainly because they believed that a shareholder approval requirement would hinder negotiations regarding equity compensation plans by both parties in the collective bargaining process. The Commission believes, however, that such an exemption could expose shareholders to significant dilution because of the lack of shareholders oversight in the collective-bargaining process. Accordingly, the Commission agrees with the NYSE and Nasdaq decisions not to provide such an exemption to their respective shareholder approval requirements.

The Commission notes that commenters requested clarification as to what type of plans would be considered ''equity compensation plans'' and what type of plans would not be considered ''equity compensation plans.'' In response to commenters'' concerns, the NYSE proposed amendments to its proposal to better define ''equity compensation plans'' and clarified that such plans would expressly exclude plans that do not provide delivery of equity securities of the issuer—for example, ''cash plans''—and deferred compensation plans under which

employees pay full market value for deferred shares. The Commission notes that Nasdaq also amended its proposal to incorporate the term ''equity compensation'' and proposes to adopt a similar concept as the NYSE as to this term so that plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market price would not require shareholder approval. The Commission believes that the proposed amendments should make the NYSE and Nasdaq proposals more consistent and provide greater clarity with respect to which plans would and would not require shareholder approval.

Finally, many commenters wanted clarification as to how the new NYSE and Nasdaq shareholder approval requirements would apply to pre-existing plans. The NYSE and Nasdaq have proposed amendments to their proposals to clarify the applicability and transition period for their shareholder approval requirements. In particular, the NYSE and Nasdaq have provided that pre-existing plans, which were adopted prior to the SEC's approval of the NYSE and Nasdaq proposals, would essentially be ''grandfathered'' and would not require shareholder approval unless the plans were materially revised or amended. The NYSE provides further clarification that shareholder approval is required for pre-existing plans that were not approved by shareholders and that do not have an evergreen formula or a specific number of shares available under the plan. The Commission believes that this clarification should provide companies with guidance as to which plans would be subject to the new NYSE and Nasdaq shareholder approval requirements.

H. Elimination of Broker-Dealer Voting on Equity Compensation Plans

The Commission notes that several commenters supported the NYSE's proposed rule change to prohibit broker-dealers from voting proxies on equity compensation plans without the beneficial owner's explicit consent. These commenters urged the NYSE to adopt a prohibition for broker voting without instructions on all matters, not just with respect to equity compensation plans. Some of these commenters were concerned that broker-dealers tend to side with management and do not always vote in their client's best interest. One commenter requested clarification on the effective date for eliminating broker voting on equity compensation plans and suggested that the NYSE consider a transition period for the effective of the new rule.

The Commission further notes that three commenters opposed the elimination of broker voting on equity compensation plans, stating that such elimination would harm smaller issuers and provide uncertainty as to whether there will be a quorum at the next meeting. These commenters suggested that the NYSE consider an alternative to the elimination of broker voting—''mirror'' or ''echo'' voting—where unvoted shares held by a broker-dealer would be deemed as being voted proportionally to votes that were actually cast. One commenter requested clarification that the NYSE's proposed elimination of broker voting on equity compensation plans would only apply to NYSE listed issuers and not to Amex listed issuers.

The Commission believes that the NYSE's provision precluding broker voting on equity compensation plans is consistent with the Act. The Commission notes that equity compensation plans have become an important issue for shareholders. Because of the potential for dilution from such issuances, shareholders should be making the determination rather than brokers on their behalf. The Commission further notes that, generally under NYSE rules, only matters that are considered routine are allowed to be voted on by a broker on behalf of a beneficial owner. Because of the recent significance and concern about equity compensation plans, the Commission believes that it is appropriate for the NYSE to decide that shareholder approval of equity compensation plans is not a routine matter and must be voted on by the beneficial owner. As noted above, NASD rules do not provide for broker voting on any matters, so the NYSE's rule is now consistent for equity compensation plans. The Commission has considered the impact on smaller issuers, such as those listed on Nasdaq and the Amex, in response to the comments on this issue. The Commission believes that the benefit of ensuring that the votes reflect the views of beneficial shareholders on equity compensation plans outweighs the potential difficulties in obtaining the vote.

The Commission notes that, in its original filing, the NYSE committed to establishing a working group to advise on how to facilitate the implementation of this new rule prohibiting brokers from voting on equity compensation plans without voting instructions from the beneficial owner of the shares. The Commission also notes that the NYSE, in response to a commenter's concerns, has implemented a transition period that would make the new rule eliminating broker voting on equity compensation plans applicable only to shareholder meetings that occur on or after the 90th day from the effective date of the NYSE proposal.

I. Summary

Overall, the Commission believes that the proposed amendments to the NYSE and Nasdaq proposals should alleviate many of the concerns raised by the commenters and should provide for more clear and uniform standards for shareholder approval of equity compensation plans under both NYSE and NASD rules. The Commission notes that, even with the availability of the proposed limited exemptions to shareholder approval under the NYSE and Nasdaq proposals, shareholder approval under the new standards would be required in more circumstances than under existing NYSE and NASD rules. The Commission further notes that the NYSE proposes to add a requirement that an issuer must notify it in writing when it uses one of the exemptions from the shareholder approval requirements and that Nasdaq has committed to considering such a requirement. The Commission believes that this disclosure requirement should reduce the potential for abuse of any of the exemptions.[121] In addition, the NYSE's proposed amendment to NYSE Rule 452, which would preclude broker-dealers from voting on equity compensation plans without explicit instructions from the beneficial owner, is consistent with the standard under current NASD rules.

The Commission notes that the NYSE and Nasdaq proposals, while not identical, set a consistent, minimum standard for shareholder approval of equity compensation plans. These proposals should help to ensure that companies will not make listing decisions simply to avoid shareholder approval requirements for equity compensation plans. As noted above, many of the commentators expressed concerns over the differences between the proposals, as well as over issues of scope and clarity. The Commission believes the proposed amendments have addressed these concerns. Thus, the Commission believes that the NYSE and Nasdaq proposals should provide shareholders with greater protection from the potential dilutive effect of equity compensation plans. Based on the above, the Commission finds that the NYSE and Nasdaq proposals should help to protect investors, are in the

[121] *See also* supra note 118.

public interest, and do not unfairly discriminate among issuers, consistent with sections 6(b) and 15A(b) of the Act.[122] The Commission therefore finds the proposals, as amended, to be consistent with the Act and the rules and regulations thereunder.

V. Accelerated Approval of NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3

The Commission finds good cause for approving NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 to the NYSE and Nasdaq proposed rule changes prior to the thirtieth day after the amendments are published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[123] NYSE Amendment No. 1 proposes technical corrections to the proposed rule language of the NYSE proposal. NYSE Amendment No. 2 proposes changes to the NYSE proposal based on discussions with Commission staff and in response to the comment letters. As discussed more fully above, NYSE Amendment No. 2, among other things, does the following: (1) Clarifies the terms ''equity compensation plan,'' ''material revision,'' and ''repricing''; (2) defines ''evergreen,'' ''formula'' and ''discretionary'' plans; and (3) provides new transition rules. Nasdaq Amendment No. 3, which replaces Nasdaq Amendment No. 2 in its entirety, also does the following: (1) States that the Nasdaq Board of Directors approved the Nasdaq proposed rule changes for filing with the Commission; and (2) proposes clarifying and conforming changes to the Nasdaq proposal based on recommendations from Commission staff and in response to the comment letters. As discussed more fully above, Nasdaq Amendment No. 3, among other things, also clarifies the term ''material amendment,'' proposes an exception to shareholder approval for plans that provide a way to purchase shares on the open market or from the issuer at fair market value, and discusses evergreen plans and repricings.

The Commission believes that the proposed changes in NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 not only address many concerns raised in the comment letters, but are necessary to the conformity and proper application of the NYSE and Nasdaq listing standards relating to shareholder approval of equity compensation plans. The Commission therefore believes that accelerated approval of NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 is appropriate. The Commission also notes that the amendments provide further clarification to portions of the NYSE and Nasdaq proposals that have already been noticed for comment and do not separately raise any new regulatory issues. Based on the above, the Commission finds, consistent with sections 6(b)(5),[124] 15A(b)(6),[125] and 19(b)[126] of the Act, that good cause exists to accelerate approval of NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 to the NYSE and Nasdaq proposed rule changes, including whether NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 are 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 offices of the NYSE and Nasdaq. All submissions should refer to File No. SR–NYSE–2002–46 and SR–NASD–2002–140 and should be submitted by July 24, 2003.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes, SR–NYSE–2002–46 and SR–NASD–2002–140, as amended, are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and a national securities association, respectively, and, in particular, with section 6(b)(5) of the Act[127] and with section 15A(b)(6) of the Act,[128] respectively.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[129] that the proposed rule changes, SR–NYSE–2002–46 and SR–NASD–2002–140, and Nasdaq Amendment No. 1 are approved, and that NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[130]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–16883 Filed 7–2–03; 8:45 am]

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[122] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78*o*–3(b)(6).

[123] 15 U.S.C. 78s(b)(2).

[124] 15 U.S.C. 78f(b)(5).

[125] 15 U.S.C. 78*o*–3(b)(6).

[126] 15 U.S.C. 78s(b).

[127] 15 U.S.C. 78f(b)(5).

[128] 15 U.S.C. 78*o*–3(6).

[129] 15 U.S.C. 78s(b)(2).

[130] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48100; File No. SR–PCX–2003–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto To Reduce Archipelago Exchange Facility Fees and Charges for the Execution and Routing of Odd-Lot Orders and To Clarify the Application of Market Data Revenue Sharing Credit

June 26, 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 30, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') 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 the PCX. On June 26, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the PCX made a technical correction to the proposal, the substance of which has been incorporated into this notice. *See* letter from Peter D. Bloom, Acting Managing Director, Regulatory Policy, PCX to Tim Fox, Attorney, Division of Market Regulation, Commission, dated June 25, 2003.

proposes to amend its fee schedule for services provided to ETP Holders [4] and Sponsored Participants [5] that use the Archipelago Exchange (''ArcaEx'') by: (1) Reducing the per-share odd-lot transaction fee for Nasdaq securities; [6] (2) reducing the per-share odd-lot routing service fee for Nasdaq securities; and (3) clarifying the application of the market data revenue credit for Tracking Orders.

The text of the proposed rule change is available at the principal offices of the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX proposes to reduce the per-share odd-lot transaction fee charged to ETP Holders and Sponsored Participants (collectively ''Users'') that execute trades on ArcaEx. The PCX currently charges all Users a transaction fee of $0.03 per share for odd-lot orders executed in Nasdaq securities on ArcaEx.[7] The PCX is proposing to reduce this odd-lot transaction fee to $0.004 per share, and will leave unchanged its current odd-lot fee for listed securities. The rationale for this change is to adjust the odd-lot transaction fee for Nasdaq securities to a more competitive level to accommodate Users' interest in sending odd-lot orders to ArcaEx. ArcaEx evaluated the economics of lowering the odd-lot transaction fee for Nasdaq securities and determined that is was feasible, given the costs involved.

The PCX also proposes to reduce the per share transaction fee for odd-lot orders in Nasdaq securities that are routed away and executed by another market center or participant. The PCX proposes to reduce the routing service fee from $0.03 to $0.004 per share to conform to the proposed fee of $0.004 per share that will apply to odd-lot orders executed on ArcaEx.[8] Again, for competitive reasons, the PCX will leave unchanged its current odd-lot routing service fee for listed securities.

With respect to PCX's market data revenue credit for exchange-listed securities, the PCX proposes to amend its fee schedule to clarify the application of this credit for Tracking Orders.[9] Specifically, the PCX is adding a footnote [10] to make it clear that a User who submits a Tracking Order instruction that subsequently matches against an inbound marketable order will not be entitled to receive the liquidity provider credit.[11] The PCX believes that this change will more accurately define the liquidity provider credit that the Exchange pays to Users who help promote liquidity, transparency and price discovery.

2. Statutory Basis

The PCX believes that its proposal to amend its schedule of dues, fees and charges is consistent with section 6(b) of the Act [12] in general, and furthers the objectives of section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among PCX members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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

PCX neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the PCX represents that the foregoing rule change establishes or changes a due, fee, or other charge imposed by the PCX, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b–4(f)(2) thereunder.[15] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the 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.[16]

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

[4] *See* PCXE Rule 1.1(n) (defining ''ETP Holder'').

[5] A ''Sponsored Participant'' means ''a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29.'' *See* PCXE Rule 1.1(tt).

[6] *See* PCXE Rule 1.1(aa) (defining ''Nasdaq Security'').

[7] The PCX notes that the odd-lot portion of a mixed lot are subject to the $0.03 per share transaction fee. Also, odd-lot orders that are created as a result of a partial fill of a round lot on ArcaEx will continue to be excluded from this fee.

[8] The Exchange notes that odd-lot orders that are created as a result of a partial fill of a round lot that are subsequently routed away and executed on another market will continue to be subject to the $0.004 per share fee applicable to round lot orders.

[9] The Tracking Order Process, which is available during Core Trading Hours only, is the fourth step of the ArcaEx execution algorithm. Any User may submit an instruction to ArcaEx for the parameters of a Tracking Order. The parameters include: the maximum aggregate size; the maximum tradeable size; the price in relation to the NBBO; and the relevant security. *See* PCXE Rule 7.37(c) for a detailed description of the Tracking Order Process.

[10] The current footnote 2 in the PCX's fee schedule relating to the ''Drop Copy'' Processing Fee is being renumbered as footnote 3.

[11] Under its market data revenue sharing program, PCX shares a portion of its gross revenues derived from market data fees (*i.e.*, tape revenue) with any User that provides liquidity by entering a resting limit order into the ArcaEx Book that is then executed against an incoming marketable order within the Display Order or Working Order processes.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] On July 2, 2002, the Commission issued an Order abrogating certain proposed rule changes relating to market data revenue sharing programs. *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (''Abrogation Order''). The Commission's publication of the instant proposed rule change, which codifies an existing practice in the Exchange's market data revenue sharing program, should not be construed as resolving the issues raised in the Abrogation Order.

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 also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–23 and should be submitted by July 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–16814 Filed 7–2–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before August 4, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Borrower's Progress Certification.

No: 1366.

Frequency: On Occasion.

Description of Respondents: Disaster Loan Borrowers.

Responses: 16,104.

Annual Burden: 12,078.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–16863 Filed 7–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, July 20, 2003, from 9 a.m. to 5 p.m. at the Westin Riverwalk Hotel, San Antonio, Texas to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information, please write or call Evelyn Y. Prentice, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416, telephone number (202) 205–6185.

Candace Stoltz,

Director, Advisory Councils.

[FR Doc. 03–16809 Filed 7–2–03; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Bureau of Nonproliferation

[Public Notice 4392]

Imposition of Nonproliferation Measures Against Chinese and North Korean Entities, Including Ban on U.S. Government Procurement

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that five Chinese and one North Korean entities have engaged in activities that require the imposition of measures pursuant to Section 3 of the Iran Nonproliferation Act of 2000, which provides for penalties on entities for the transfer to Iran of equipment and technology controlled under multilateral export control lists (Missile Technology Control Regime, Australia Group, Nuclear Suppliers Group, Wassenaar Arrangement) or otherwise having the potential to make a material contribution to weapons of mass destruction (WMD) or missiles.

EFFECTIVE DATE: June 26, 2003.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202–647–1142). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to sections 2 and 3 of the Iran Nonproliferation Act of 2000 (Pub. L. 106–178), the U.S. Government determined on June 23, 2003, that the measures authorized in section 3 of the Act shall apply to the following foreign entities identified in the report submitted pursuant to section 2(a) of the Act:

Taian Foreign Trade General Corporation (China) and any successor, sub-unit, or subsidiary thereof;

Zibo Chemical Equipment Plant, aka Chemet Global Ltd., aka South Industries Science and Technology Trading Company, Ltd. (China) and any successor, sub-unit, or subsidiary thereof;

Liyang Yunlong Chemical Equipment Group Company (China) and any successor, sub-unit, or subsidiary thereof;

China North Industries Corporation (NORINCO) (China) and any successor, sub-unit, or subsidiary thereof;

China Precision Machinery Import/Export Corporation (CPMIEC) (China) and any successor, sub-unit, or subsidiary thereof;

Changgwang Sinyong Corporation (North Korea) and any successor, sub-unit, or subsidiary thereof.

Accordingly, pursuant to the provisions of the Act, the following measures are imposed on these entities:

1. No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods, technology, or services from these foreign persons;

2. No department or agency of the United States Government may provide any assistance to the foreign persons, and these persons shall not be eligible to participate in any assistance program of the United States Government;

3. No United States Government sales to the foreign persons of any item on the United States Munitions List (as in effect on August 8, 1995) are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and,

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is

[17] 17 CFR 200.30–3(a)(12).

controlled under the Export Administration Act of 1979 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the United States Government and will remain in place for two years, except to the extent that the Secretary of State or Deputy Secretary of State may subsequently determine otherwise. A new determination will be made in the event that circumstances change in such a manner as to warrant a change in the duration of sanctions.

Section 2(a) of the Iran Nonproliferation Act of 2000 requires twice-yearly reports to Congress identifying foreign entities (not governments) with respect to whom there is credible information that they have transferred to Iran: (a) Items on multilateral export control lists; or (b) items not on any control list, but which nevertheless would be, if they were U.S. goods, services, or technology, prohibited for export to Iran because of their potential to make a material contribution to the development of missiles or WMD. In previous reports, we reported pursuant to Section 2(a) transfers of items not on a multilateral list if they were controlled on the Commerce Control List for WMD or missile reasons, on the Nuclear Regulatory Commission or Department of Energy nuclear control lists, or on the United States Munitions List.

We now are adding to the items previously reported, both (1) items of the same kinds as those on multilateral lists, but falling below the control list parameters (*e.g.*, aluminum powder above the Missile Technology Control Regime's 0–200 micron size limit), when it is determined they have the potential to make a material contribution to weapons of mass destruction, or cruise or ballistic missile systems; and (2) other items with the potential of making such a material contribution, when added through case-by-case decisions.

Dated: June 26, 2003.

Andrew K. Semmel,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–16938 Filed 7–2–03; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Notice of the Results of the 2002 Annual Product Reviews, 2001 Special Three Country Review, GSP–AGOA 2001 Review, and Previously Deferred Product Decisions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY:

This notice announces the disposition of the product petitions accepted for review in the combined 2001/2002 GSP Annual Review and the Special Three Country GSP Review for Argentina, the Philippines, and Turkey, the results of the 2002 De Minimis Waiver and Redesignation Review, the 2002 competitive need limitation removals, the 2001 GSP–AGOA (African Growth and Opportunity Act) Review, and other previously deferred product decisions.

FOR FURTHER INFORMATION CONTACT: The GSP Subcommittee, Office of the United States Trade Representative (USTR), 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of designated articles when imported from beneficiary developing countries. The GSP program is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''Trade Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In the combined 2001/2002 Annual Review, the GSP Subcommittee of the Trade Policy Staff Committee reviewed petitions to change the product coverage of the GSP. The disposition of those petitions is described in Annex I of this notice.

The disposition of petitions reviewed in the 2001 Special Three Country Review for Argentina, the Philippines, and Turkey is described in Annex II.

In the 2002 De Minimis Waiver and Redesignation Review, the GSP Subcommittee reviewed the appraised import values of each GSP-eligible article in 2002 to determine whether an article from a GSP beneficiary developing country exceeded one of the GSP Competitive Need Limitations (CNLs). De minimis waivers were granted to certain articles which exceeded the 50 percent import share CNL, but for which the aggregate value of the imports of that article was below the 2002 de minimis level of $16 million. Annex III to this notice contains a list of the articles and countries granted de minimis waivers. Certain articles from GSP-eligible countries that had previously exceeded one of the CNLs, but had fallen below the CNLs in 2002 ($105 million and 50 percent of U.S. imports of the article), were redesignated for GSP eligibility. These articles are listed in Annex IV to this notice.

Articles that exceeded one of the GSP CNLs in 2002, and that are newly excluded from GSP eligibility, are listed in Annex V to this notice.

The disposition of petitions in the GSP–AGOA 2001 Canned Pears and Manganese Metal Review is described in Annex VI.

The disposition of a product petition on which a decision in a previous review was deferred is described in Annex VII.

Steven Falken,

Executive Director GSP, Chairman, GSP Subcommittee.

BILLING CODE 3190–01–P

Annex I. Decisions on Product Petitions in the Combined 2001/2002 GSP Annual Review

Case #		Product		Decision
		A. Petitions to Add Products to GSP		
			Waiver of Competitive Need Limits also requested	
2002-01	0406.20.51	Cheese Powder		Granted
2002-02	0710.22.37	Other Beans (Whole)		Denied
2002-03	0710.22.40	Beans (Reduced in Size)		Denied
2002-04	0710.30.00	Spinach		Denied
2002-05	0710.80.97(pt)	Vegetables, Other – Broccoli		Denied
2002-06	0710.80.9730	Vegetables, Other – Cauliflower		Denied
2002-07	0710.90.91	Other Mixtures of Vegetables		Denied
2002-08	0804.20.80	Figs, Fresh or Dried, Other than Whole		Denied
2002-09	1508.10.00	Crude Peanut (Ground-Nut) Oil	✓	Denied
2002-10	1508.90.00	Peanut (Ground-Nut) Oil, Other than Crude		Denied
2002-11	1604.13.20	Sardines, Neither Skinned nor Boned	✓	Denied
2002-12	1604.13.30	Sardines, Skinned or Boned	✓	Denied
2002-13	2001.90.20	Capers, Prepared or Preserved by Vinegar	✓	Granted Addition to GSP; Denied Waiver CNL
2002-14	2008.19.20	Filberts, Otherwise Prepared or Preserved		Denied
2002-15	2009.31.6020	Frozen Concentrated Lemon Juice, Not Exceeding 20 Brix	✓	Denied
2002-16	2009.39.6020	Frozen Lemon Juice, Exceeding 20 Brix	✓	Denied
2002-17	2903.69.08	PCBTF		Granted
2002-18	2903.69.08	3,4-DCBTF		Granted
2002-19	2917.12.10	Adipic Acid		Granted
2002-20	2921.43.15	Trifluralin		Granted
2002-21	2921.43.22	Trifluoromethyl		Granted
2002-22	2922.42.10	MSG (Monosodium Glutamate)		Petition Withdrawn
2002-23	7202.93.80	Ferroniobium, Other than Vacuum Grade	✓	Granted

Case #		Product		Decision
2002-24	8108.20.0010	Titanium Sponge	✓	Denied
2002-25	8528.12.3224	Color TV Set, Over 35.56 cm But Not Over 37 cm		Denied
2002-26	8528.12.3235	Color TV Set, Over 45 cm But Not Over 50 cm		Denied
2002-27	8528.12.3250	Color TV Set, Over 52 cm But Not Over 77 cm		Denied
2002-28	8528.21.70	Color Video Monitors With Flat Panel Screen		Denied
		B. Petitions to Add Products to GSP Only for Countries Designated as Least-Developed Beneficiary Developing Country (LDBDC)		
2002-29	8211.91.20	Table Knives, Stain/Steel Handles, With Fixed Blades		Granted
2002-30	8215.99.01	Forks, Stain/Steel Handles, Base Metal Forks		Granted
2002-31	8215.99.10	Other Forks, Stain/Steel Handles, Valued Under 25¢		Granted
2002-32	8215.99.30	Spoons, Stain/Steel Handles, Valued Under 25¢		Granted
		C. Petition to Remove Product from GSP		
2002-33	8108.90.60	Wrought Titanium , Not Elsewhere Specified or Included		Decision Deferred
		D. Petitions to Waive Competitive Need Limits for [Country]		
2002-34	0813.10.00	Apricots, Dried	[Turkey]	Denied
2002-35	2909.19.14	MTBE	[Brazil]	Denied
2002-36	7113.19.29	Gold Necklaces and Neck Chains	[Turkey]	Granted
2002-37	7202.50.00	Ferrosilicon Chromium	[Kazakhstan]	Granted
2002-38	7418.19.10	Copper, Table Articles, Coated W Precious Metals	[India]	Granted
2002-39	7418.19.50	Copper (Not Brass) Articles, Coated W Precious Metals	[India]	Granted
2002-40	8413.30.10	Certain Fuel Injection Pumps	[Brazil]	Denied
2002-41	8414.51.30	Ceiling Fans for Permanent Installation	[Thailand]	Granted
2002-42	8528.12.28	TV/VCR-DVD Combination, Flat Screen	[Thailand]	Granted
2002-43	8544.30.00	Automotive Wiring Harness For Aircraft/Ships	[Thailand]	Granted
2002-44	8708.99.67	Automotive Power Train Components	[Brazil]	Denied
2002-45	9405.50.20	Gas Non-Electrical Incandescent Lamps	[India]	Granted
2002-46	9405.50.30	Brass Non-Electrical Lamps & Light Fixtures	[India]	Granted

Case #		Product		Decision
2002-47	9405.50.40	Non Brass Non-Electrical Lamps & Light Fixtures	[India]	Granted

Annex II. Decisions on Product Petitions in the 2001 Special Three Country Review for Argentina, Philippines, and Turkey

Case #		Product		Decision
		A. Petitions to Add Products to GSP		
			Waiver of Competitive Need Limits also requested	
2001-SR-01	0406.90.41	Italian-Type Cheeses of Cow's Milk		Granted
2001-SR-02	1202.10.40	Peanuts, Not Roasted/Cooked, in Shell		Granted
2001-SR-03	1202.20.40	Peanuts, Not Roasted/Cooked, Shelled	✓	Granted
2001-SR-04	1901.90.42	Dulce De Leche		Granted
2001-SR-05	2008.11.25	Blanched Peanuts	✓	Granted
2001-SR-06	2008.11.45	Peanuts, Otherwise Prepared or Preserved		Granted
2001-SR-07	2009.41.20	Pineapple Juice, Not Concentrated		Decision Deferred
2001-SR-08	2009.49.20	Pineapple Juice, Not Concentrated - Other	✓	Decision Deferred
2001-SR-09	2009.61.00	Grape Juice (With Must) Brix Value Not Over 30	✓	Denied
2001-SR-10	2009.69.00	Grape Juice (With Must) - Other	✓	Denied
2001-SR-11	2204.30.00	Wine - Other Grape Must		Petition Withdrawn
2001-SR-12	3806.90.00	Resin Acids, Resin/Rosin Derivatives		Granted
2001-SR-13	7202.99.20	Calcium Silicate		Granted
2001-SR-14	8482.10.10	Ball Bearings With Integral Shafts		Petition Withdrawn
2001-SR-15	8482.10.50	Ball Bearings, Other Than With Integral Shafts		Denied
2001-SR-16	8482.20.00	Tapered Roller Bearings		Petition Withdrawn

Case #		Product	Decision
		B. Petitions to Waive Competitive Need Limits for [Country]	
2001-SR-17	7113.19.50	Necklaces and Neck Chains of Gold - Other [Turkey]	Granted

Annex III. De Minimis Waivers

HTSUS	COUNTRY	IMPORTS	SHARE	DESCRIPTION (TRUNCATED)
0305.69.60	Philippines	391,300	61.3%	Fish, nesi, in brine or salted but not dried or smoked, other t
0405.20.80	Poland	32,742	77.6%	Other dairy spreads, not butter substitutes or of a type provid
0710.29.15	India	135,083	94.7%	Lentils, uncooked or cooked by steaming or boiling in water, fr
0712.90.70	Egypt	462,619	75.7%	Dried fennel, marjoram, savory and tarragon nesi, whole, cut, s
0714.20.10	India	55,677	66.0%	Sweet potatoes, frozen, whether or not sliced or in the form of
0802.31.00	Turkey	19,947	65.9%	Walnuts, fresh or dried, in shell
0802.50.20	Turkey	466,389	73.0%	Pistachios, fresh or dried, in shell
0804.50.80	Philippines	5,293,163	51.0%	Guavas, mangoes, and mangosteens, dried
0810.60.00	Thailand	473,736	100.0%	Durians, fresh
0813.30.00	Chile	7,665,982	78.8%	Apples, dried
0813.40.10	Thailand	1,840,143	97.5%	Papayas, dried
1301.90.40	Brazil	82,355	89.9%	Turpentine gum (oleoresinous exudate from living trees)
1401.90.40	Madagascar	470,507	60.1%	Lime bark, raffia, reeds, rushes, cleaned, bleached or dyed cer
1604.15.00	Chile	6,679,751	51.1%	Prepared or preserved mackerel, whole or in pieces, but not min
1605.90.10	Thailand	4,357,651	64.0%	Boiled clams in immediate airtight containers, the contents of
1605.90.55	Indonesia	1,097,532	50.0%	Prepared or preserved snails, other than sea snails
1701.11.05	Mauritius	28,864	79.5%	Cane sugar, raw, in solid form, w/o added flavoring or coloring
1702.90.35	Brazil	2,676,599	58.2%	Invert molasses
1806.10.43	Brazil	7,652	76.7%	Cocoa powder, o/90% by dry wt of sugar, subject to gen. note 15
1901.20.45	Argentina	2,565	100.0%	Mixes for bakers wares (dairy prod. of Ch4 US note 1), n/o 25%
1901.90.28	Poland	333,006	64.3%	Dry mix. w/less than 31% bf & 17.5% or more sodium caseinate, b
2008.19.30	Turkey	576,365	65.5%	Pignolia and pistachio nuts, otherwise prepared or preserved, n
2008.99.35	Thailand	3,601,668	86.6%	Lychees and longans, otherwise prepared or preserved, nesi
2008.99.45	Philippines	143,055	83.6%	Papaya pulp, otherwise prepared or preserved, nesi
2008.99.50	Thailand	1,706,364	50.1%	Papayas, other than pulp, otherwise prepared or preserved, nesi
2305.00.00	Argentina	704,302	100.0%	Oilcake and other solid residues, resulting from the extraction
2306.30.00	Argentina	2,152,625	100.0%	Oilcake and other solid residues, resulting from the extraction
2515.12.20	Turkey	2,213,875	63.0%	Travertine, merely cut into blocks or slabs of a rectangular (i
2804.29.00	Russia	9,547,913	69.3%	Rare gases, other than argon
2836.91.00	Chile	12,843,450	82.5%	Lithium carbonates
2840.11.00	Turkey	93,572	100.0%	Anhydrous disodium tetraborate (refined borax)
2840.19.00	Turkey	2,895,772	99.5%	Disodium tetraborate (refined borax) except anhydrous
2841.61.00	Czech Republic	1,390,041	50.4%	Potassium permanganate
2850.00.20	Russia	95,035	51.5%	Hydride, nitride, azide, silicide and boride of vanadium
2903.51.00	Romania	624,875	93.7%	1,2,3,4,5,6-Hexachlorocyclohexane
2903.69.30	Russia	5,689	100.0%	Pesticides derived from halogenated derivatives of aromatic hyd
2908.10.15	Hungary	763,716	100.0%	3-Hydroxy-alpha,alpha,alpha-trifluorotoluene
2909.50.40	Indonesia	3,074,255	54.6%	Odoriferous or flavoring compounds of ether-phenols, ether-alco
2917.19.10	Hungary	1,820,632	78.2%	Ferrous fumarate
2917.32.00	Indonesia	5,266,004	65.9%	Dioctyl orthophthalates
2918.21.10	Brazil	6,052,670	75.3%	Salicylic acid and its salts, suitable for medicinal use
2931.00.25	Brazil	1,450,077	100.0%	Pesticides of aromatic organo-inorganic (except organo-sulfur)
2934.20.05	Brazil	157,750	65.0%	N-tert-Butyl-2-benzothiazolesulfenamide
2938.10.00	Brazil	1,204,851	72.2%	Rutoside (Rutin) and its derivatives
4010.12.10	Hungary	2,284,236	79.1%	Conveyor belts or belting of vulcanized rubber reinforced only
4101.90.35	Brazil	791	100.0%	Raw buffalo hides and skins (other than whole), pretanned but n
4101.90.50	Brazil	92,885	51.7%	Raw bovine hides and skins (other than whole), pretanned (other
4107.11.60	Brazil	914,723	51.2%	Full grain unsplit upper & sole leather of bovines (not buffalo
4107.19.40	India	35,212	98.9%	Whole buffalo skin leather (not full grain unsplits/grain split
4107.91.40	India	128,578	84.5%	Full grain unsplit buffalo leather (not whole), w/o hair on, pr
4107.92.40	Pakistan	1,260	100.0%	Grain splits buffalo leather (not whole), without hair on, prep

4412.99.46	Chile	641,544	50.5%	Plywood nesoi, softwood outer plies, no trop. hard wood ply, no
4802.54.10	Brazil	3,145,338	66.3%	Writing paper, weigh < 40 g/m2, cont. n/o 10% total fiber conte
4802.54.20	Indonesia	3,708,356	84.3%	India & bible paper, weigh < 40 g/m2, n/o 10% total fiber conte
4802.57.20	Indonesia	172,566	95.5%	Drawing paper, wt 40 g/m2 to 150 g/m2, cont. n/o 10% by weight
5208.31.20	India	249,298	78.7%	Dyed plain weave certified hand-loomed fabrics of cotton, conta
5208.32.10	India	113,692	60.0%	Dyed plain weave certified hand-loomed fabrics of cotton, cont.
5208.41.20	India	442,466	97.3%	Plain weave certified hand-loomed fabrics of cotton, 85% or mor
5208.42.10	India	321,786	86.9%	Plain weave certified hand-loomed fabrics of cotton, 85% or mor
5209.31.30	India	2,613,015	98.8%	Dyed, plain weave certified hand-loomed fabrics of cotton, cont
5209.41.30	India	2,060,458	96.9%	Plain weave certified hand-loomed fabrics of cotton, cont. 85%
5607.90.35	Philippines	2,604,494	58.5%	Twine, cordage, rope & cables of abaca or other hard (leaf) fib
5702.39.10	India	794,552	89.0%	Carpets and other textile floor coverings of pile construction,
5702.49.15	India	1,236,558	58.5%	Carpets and other textile floor coverings of pile construction,
6116.99.35	Philippines	306,209	64.4%	Gloves, mittens & mitts specially designed for sports, includin
6406.10.85	India	11,000	96.3%	Uppers for footwear, nesoi, of materials nesoi, w/external surf
7114.19.00	India	1,131,106	54.3%	Precious metal (o/than silver) articles, nesoi, whether or not
7202.50.00	Kazakhstan	11,532,496	98.0%	Ferrosilicon chromium
7202.99.10	Brazil	295,277	100.0%	Ferrozirconium
8112.92.50	Chile	14,518,824	98.7%	Rhenium, unwrought; rhenium powders
8514.20.40	Thailand	1,885,056	59.8%	Industrial or laboratory microwave ovens for making hot drinks
8546.10.00	Brazil	447,773	58.0%	Electrical insulators of glass

Annex IV. Redesignations

HTSUS	COUNTRY	IMPORTS	SHARE	DESCRIPTION (TRUNCATED)
0711.30.00	Turkey	217,888	26.8%	Capers, provisionally preserved but unsuitable in that state for
0712.90.74	Turkey	177,008	0.6%	Dried tomatoes in powder, but not further prepared
0805.50.30	Turkey	0	0.0%	Tahitian limes, Persian limes and other limes of the Citrus latif
0805.90.01	Turkey	0	0.0%	Citrus fruit, nesi, fresh or dried, including kumquats, citrons a
1602.50.09	Argentina	5,936,878	20.4%	Prepared or preserved meat of bovine animals, cured or pickled, n
1703.90.50	Poland	3,253,743	14.8%	Molasses nesi
2002.90.40	Turkey	0	0.0%	Tomatoes in powder, prepared or preserved otherwise than by vineg
2005.10.00	Turkey	0	0.0%	Homogenized vegetables, prepared or preserved otherwise than by v
2007.99.50	Brazil	910,291	9.3%	Guava and mango pastes and purees, being cooked preparations
2008.19.30	Pakistan	3,400	0.3%	Pignolia and pistachio nuts, otherwise prepared or preserved, nes
2907.23.00	Brazil	132,140	3.6%	4,4'-Isopropylidenediphenol (Bisphenol A, Diphenylolpropane) and
2915.31.00	Brazil	1,568,393	13.4%	Ethyl acetate
2934.99.15	Brazil	0	0.0%	Aromatic or modified aromatic herbicides of other heterocyclic co
3824.90.40	Brazil	527,893	0.6%	Fatty substances of animal or vegetable origin and mixtures there
3904.21.00	Brazil	0	0.0%	Polyvinyl chloride, mixed with other substances, nonplasticized,
4006.10.00	Brazil	74,773	2.9%	"Camel-back" strips of unvulcanized rubber, for retreading rubber
4010.19.50	Brazil	1,371	0.1%	Conveyor belts/belting of vulcanized rubber, nesoi, combined w/te
4012.90.45	Sri Lanka (Ceylon)	0	0.0%	Interchangeable tire treads and tire flaps, of natural rubber, ne
4101.20.50	Brazil	6,461	12.7%	Whole bovine hide/skin (not buffalo) (n/o 8 kg dried, 10 kg dry s
4101.50.50	Brazil	252	0.3%	Whole raw bovine hides/skins (not buffalo), weight over 16 kg, su
4103.10.30	Pakistan	810	2.9%	Raw hides and skins of goat or kid (not excluded by note 1(c) to
4106.21.90	Pakistan	397,058	16.8%	Hides and skins of goats or kids, without hair on, tanned but not
4106.22.00	Pakistan	397,164	24.4%	Hides and skins of goats or kids, without hair on, tanned but not
4107.19.50	Argentina	20,857,618	38.8%	Whole upholstery leather of bovines (not buffalo) nesoi and equin
4107.99.50	Argentina	4,578,683	5.9%	Upholstery leather of bovines (not buffalo) or equines, not whole
4113.10.30	Pakistan	563,723	27.3%	Goat or kidskin leather, without hair on, not fancy, further prep
4113.10.60	Pakistan	116,507	7.4%	Goat or kidskin leather, without hair on, fancy, further prepared
4411.29.90	Brazil	0	0.0%	Fiberboard nesi, density between 0.5 g/cm3 and 0.8 g/cm3
4823.90.20	Philippines	3,643,939	32.1%	Articles of papier-mache, nesi
7113.19.29	Turkey	13,357,323	1.6%	Gold necklaces and neck chains (o/than of rope or mixed links)
7116.10.10	Thailand	0	0.0%	Natural pearl articles
7403.11.00	Kazakhstan	4,479,153	0.3%	Refined copper cathodes and sections of cathodes
7409.39.50	Hungary	102,355	25.2%	Copper-tin base alloys (bronze), plates, sheets and strip, with a
8211.92.60	Pakistan	1,227,864	47.9%	Hunting knives w/fixed blades, with wood handles
8211.95.50	Pakistan	0	0.0%	Base metal handles for knives (o/than table knivies) w/fixed blad
8414.51.00	Thailand	96,612,892	11.8%	Table, floor, wall, window, ceiling or roof fans, with a self-con
8528.12.16	Thailand	1,084,425	14.1%	Non-high def. color television reception app., nonprojection, w/C
9105.19.10	Brazil	0	0.0%	Alarm clocks nesoi, not electrically operated, movement measuring
9105.19.40	Brazil	0	0.0%	Alarm clocks nesoi, not electrically operated, movement measurin
9405.30.00	Thailand	92,207	0.0%	Lighting sets of a kind used for Christmas trees

Annex V. Articles Exceeding Competitive Need Limitations

HTSUS	COUNTRY	IMPORTS	SHARE	DESCRIPTION (TRUNCATED)
1602.50.09	Brazil.....	22,297,019	76.9%	Prepared or preserved meat of bovine animals, cured or pickled, n
2905.11.20	Chile.....	132,963,307	21.1%	Methanol (Methyl alcohol), other than imported only for use in pr
3823.19.20	Philippines.....	16,221,616	51.9%	Industrial monocarboxylic fatty acids or acid oils from refining
4107.11.80	Argentina.....	24,796,558	73.5%	Full grain unsplit whole bovine (not buffalo) nesoi and equine le
4816.20.00	Indonesia.....	18,447,142	88.0%	Self-copy paper, nesi
5702.99.20	India.....	15,138,041	86.5%	Carpets & other textile floor coverings, not of pile construction
6802.93.00	Brazil.....	114,433,801	22.6%	Monumental or building stone & arts. thereof, of granite, further
7106.92.50	Brazil.....	22,907,289	60.6%	Silver (including silver plated with gold or platinum), in semima
7113.19.25	Turkey.....	59,504,905	60.3%	Gold mixed link necklaces and neck chains
7615.19.30	Thailand.....	105,377,115	32.9%	Aluminum, cooking and kitchen ware (o/than cast), enameled or gla
8525.40.80	Indonesia.....	171,443,408	8.1%	Still image video cameras (other than digital) and other video ca
9001.30.00	Indonesia.....	115,422,698	45.7%	Contact lenses

Annex VI. Decisions on Product Petitions in the GSP-AGOA 2001 Review

Case		Product	Decision
		A. Petition to Add Product to GSP Only for Countries Designated as a Beneficiary sub-Saharan African Country (in General Note 16 of the HTS)	
2001-AGOA-1	8111.00.45	Unwrought Manganese Flake	Granted
		B. Petition to Remove Product from GSP Only for Countries Designated as a Beneficiary sub-Saharan African Country (in General Note 16 of the HTS)	
2001-AGOA-2	2008.40.00	Canned Pears	Decision Deferred

Annex VII. Previously Deferred Product Decisions

Case		Product	Decision
		A. Petitions to Add Products to GSP	
1997-14	8108.20.00	Titanium Products, Unwrought	Denied

[FR Doc. 03–16937 Filed 7–2–03; 8:45 am]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funds Availability for the Next Generation High-Speed Rail Program: Revenue Service Demonstration of Compliant Diesel Multiple Unit (DMU) Self-Propelled Passenger Cars

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: Under this Notice, the FRA encourages interested parties to submit by July 31, 2003, a Statement of Interest in receiving a grant to support a demonstration in daily revenue commuter or intercity passenger service, during calendar years 2003 and 2004, of Diesel Multiple Unit (DMU) self-propelled passenger rail cars which comply with all current Federal passenger car safety standards (''Compliant DMU''). The purpose of the demonstration is to determine the current availability of Compliant DMU technology and the suitability of this

equipment for regularly scheduled revenue service in the U.S. The subject Compliant DMU must meet all of the current requirements of 49 CFR part 238, as amended; compliance via ''grandfathering'' is not acceptable for the purposes of this announcement.

DATES: The deadline for submissions of Statements of Interest is the close of business, Thursday, July 31, 2003. The actual deadline for the submission of applications will be noted in the solicitation from FRA to prospective grantees as a result of the evaluation of the Statements of Interest.

ADDRESSES: Applicants must submit an original and six (6) copies to the Federal Railroad Administration at one of the following addresses:

Postal address (note correct zip code): Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Procurement Services (RAD–30), Mail Stop #50, 1120 Vermont Ave., NW., Washington, DC 20590.

FedEx/courier address (note correct zip code): Federal Railroad Administration, Attention: Robert L. Carpenter, Office of Procurement Services (RAD–30), Room # 6126, 1120 Vermont Ave., NW., Washington, DC 20005.

Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are encouraged to use other means to assure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: Steve Sill, Program Manager, Office of Railroad Development (RDV–11), Federal Railroad Administration, 1120 Vermont Avenue NW., Washington, DC 20590. Phone: (202) 493–6348; Fax: (202) 493–6330, or Robert Carpenter, Grants Officer, Office of Acquisition and Grants Services (RAD–30), Federal Railroad Administration, 1120 Vermont Avenue NW., Washington, DC 20590. Phone: (202) 493–6153; Fax: (202) 493–6171.

SUPPLEMENTARY INFORMATION: The demonstration will be supported with up to $3,974,000 of Federal funds provided to FRA's Next Generation High-Speed Rail Program as part of the Fiscal Year 2003 Department of Transportation and Related Agencies Appropriations Act (included in Division I of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, February 20, 2003)). The Federal funds must be matched on a dollar-for-dollar basis from non-Federal sources. FRA anticipates soliciting a single grant application and awarding a single grant for the demonstration to a public transportation agency, with the intent of beginning demonstration as soon as possible. The funds made available under this grant will be available for activities related to establishing compliance of the DMU design with existing Federal passenger safety standards (49 CFR part 238, as amended), for the acquisition of DMUs through a conventional competitive procurement process, and for service facilities necessary for revenue service demonstration. The grantee will be responsible for all other expenses of the demonstration, including the cost of passenger facilities and any net operating expenses. FRA anticipates that no further public notice will be made with respect to selecting applicants for this demonstration.

Purpose: There is substantial interest in the expanded use of passenger rail service to help address congestion in other modes of transportation and/or to provide for additional alternatives to meet current and future mobility needs. Transportation planners and decision-makers have expressed an interest in alternatives to locomotive hauled trains, which are currently the most prevalent form of passenger rail transportation in areas where electric operation is not available. Historically, DMUs were available for this purpose, but none has entered service domestically since FRA issued the Passenger Equipment Safety Standards Final Rule on May 12, 1999. Indeed, no DMUs had been built new in the U.S. for decades before the issuance of that rule. The purpose of the demonstration is to determine whether the current state of railroad technology development offers the availability, in the very near term, of a DMU self-propelled passenger car that meets current Federal passenger car safety standards found at 49 CFR part 238, as amended. If such technology is available, the demonstration will develop technology-specific cost, maintenance, reliability and operating data to help transportation planners and decision makers determine whether a Compliant DMU should be considered as an option for rail-based transportation. The equipment must meet all of the current requirements of 49 CFR part 238, as amended; compliance via ''grandfathering'' is not acceptable for the purposes of this announcement.

Authority: The authority for the Program can be found in Title 49, United States Code, Section 26102 and in Fiscal Year 2003 Department of Transportation and Related Agencies Appropriations Act (included in Division I of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, February 20, 2003)). The Secretary of Transportation's responsibilities under this program have been delegated to the Federal Railroad Administration.

Funding: Fiscal Year 2003 Department of Transportation and Related Agencies Appropriations Act provides $3,974,000 and directs FRA to award a grant to demonstrate Compliant DMU vehicles. It is anticipated that the available funding will support one demonstration. Additional funding for this or related work may be available in subsequent fiscal years.

Schedule for Demonstration Program: As directed by the Congress, FRA anticipates beginning demonstration activities in calendar 2003 and continuing them in 2004. It is anticipated that evaluation of the demonstration operation will continue for up to two years beyond the initial funding year. FRA anticipates that the eligible participant(s) will, where necessary, contract or otherwise enter into partnerships with developers and manufacturers of Compliant DMUs to accomplish the demonstration.

Eligible Participants: Any United States public transportation agency or combination of such agencies is eligible to apply for funding under this Notice. For state applicants, if the proposed demonstration territory is in more than one state, a single state agency should apply on behalf of all of the participating states.

Eligible Technology Demonstrations: Eligible projects must demonstrate a Compliant DMU vehicle in daily revenue passenger service.

Requirements for Statements of Interest: The following points describe minimum content which will be required in Statements of Interest. Each Statement of Interest will:

1. Describe the proposed demonstration in detail, including the location and transportation service to be provided, the anticipated start date and duration of the demonstration, anticipated schedules, passenger service facilities to be employed, anticipated passenger utilization of the demonstration service, and how necessary maintenance and support operations will be conducted.

2. Describe the types of DMU technology that the public agency is considering and how the Compliant DMU used in the proposed demonstration will be selected.

3. Describe the rail line on which the proposed demonstration will be conducted, including any discussions the public agency has had with the owner of the rail line in connection with the proposed demonstration.

4. Describe the traffic types (including ownership of trains), volumes, and

speeds presently involved in operation on the demonstration track segment(s), the planned Compliant DMU demonstration service volumes and speeds, and the estimated potential corridor service volumes and speeds.

5. Specify the quantities and ownerships of operating vehicles which are anticipated to be utilized to accomplish the demonstration.

6. Show how the demonstration system initially will operate in relation to existing service, both passenger and freight.

7. Show the estimated total cost and time for accomplishing each task for implementing the demonstration, including estimates broken out, at a minimum, into the following categories: demonstration planning and installation, Compliant DMU equipment acquisition, and operating and maintenance schedules and costs. Specify sources of proposed funding, clearly indicating sources for the required non-Federal dollar-for-dollar cash match.

8. Specify what organizations will supply and install key components of the demonstration system and, to the extent available, provide letters of commitment supporting the proposed activities, schedules, and non-Federal cost sharing. Letters of support from the railroad whose tracks and facilities are to be used for the demonstration should be included.

9. Discuss the systematic operational recording, monitoring, analysis, and reporting procedures to be followed during the demonstration.

10. Discuss plans for training and familiarization of operating and maintenance personnel for the demonstration system.

Selection Criteria: The following will be considered to be positive selection factors in evaluating Statements of Interest for this demonstration:

1. The extent to which the demonstration will assist in understanding the state-of-the-art in Compliant DMU technology in areas of desired advancement, including safety, reliability, efficiency, operational flexibility, maintainability, capital costs and/or operating costs of the corridor operation, as a whole, as well as of the Compliant DMU equipment itself.

2. The extent to which the demonstration will involve an innovative Compliant DMU technology available for commercial development, as opposed to modification of equipment previously in service but currently not produced.

3. The technological risk associated with successfully demonstrating Compliant DMU technology on the schedule proposed.

4. The timeliness of the initiation of the demonstration and the availability of the Compliant DMU technology to be demonstrated.

5. The compliance of the technology with other Federal requirements, including the Americans with Disabilities Act and relevant diesel emission standards of the U.S. Environmental Protection Agency.

6. The contribution the demonstration might have to the development or expansion of the domestic passenger rail car manufacturing industry.

7. The extent to which the demonstration will have ongoing transportation benefits after the end of the scheduled demonstration.

8. The ability of the Compliant DMU technology to be readily and economically expanded to respond to increased speed, volume, and complexity of traffic.

9. The extent of non-Federal contributions to the demonstration.

Issued in Washington, DC, on June 30, 2003.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. 03–16867 Filed 7–2–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–48

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 Revenue Procedure 2003–48, Update of Checklist Questionnaire Regarding Requests for Spin-Off Rulings.

DATES: Written comments should be received on or before September 2, 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 revenue procedure 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: Update of Checklist Questionnaire Regarding Requests for Spin-Off Rulings.

OMB Number: 1545–1846.

Revenue Procedure Number: Revenue Procedure 2003–48.

Abstract: Revenue Procedure 2003–48 updates Revenue Procedure 96–30, which sets forth in a checklist questionnaire the information that must be included in a request for ruling under section 355. This revenue procedure updates information that taxpayers must provide in order to receive letter rulings under section 355. This information is required to determine whether a taxpayer would qualify for nonrecognition treatment.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 200 hours.

Estimated Total Annual Burden Hours: 36,000.

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 27, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–16942 Filed 7–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8871 and 8453–X

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 8871, Political Organization Notice of Section 527 Status; Form 8453-X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

DATES: Written comments should be received on or before September 2, 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 forms and instructions 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: Form 8871, Political Organization Notice of Section 527 Status; Form 8453–X, Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.

OMB Number: 1545–1693.

Form Numbers: 8871 and 8453–X.

Abstract: Public Law 106–230 as amended by Public Law 107–276, amended Internal Revenue Code section 527(i) to require certain political organizations to provide information to the IRS regarding their name and address, their purpose, and the names and addresses of their officers, highly compensated employees, Board of Directors, and related entities within the meaning of section 168(h)(4)). Forms 8871 and 8453–X are used to report this information to the IRS.

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: Not-for-profit institutions.

Estimated Number of Respondents: 5,500.

Estimated Time Per Respondent: 6 hours, 24 minutes.

Estimated Total Annual Burden Hours: 43,800.

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 27, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–16943 Filed 7–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–246250–96]

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 final regulation, REG–246250–96 (TD 8818), Public Disclosure of Material Relating to Tax-Exempt Organizations (§§ 301.6104(d)–3, 301–6104(d)–4, and 301.6104(d)–5).

DATES: Written comments should be received on or before September 2, 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:* Public Disclosure of Material Relating to Tax-Exempt Organizations.

OMB Number: 1545–1560.

Regulation Project Numbers: REG–246250–96.

Abstract: Under section 6104(e) of the Internal Revenue Code, certain tax-exempt organizations are required to make their annual information returns and applications tor tax exemption available for public inspection. In addition, certain tax-exempt

organizations are required to comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, to make their documents widely available. This regulation provides guidance concerning these disclosure requirements.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 1,100,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 551,000.

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 27, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–16944 Filed 7–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's election to receive accelerated payment under the Montgomery GI Bill Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0636'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed 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, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Accelerated Payment; Certifications Required from Individuals Electing Accelerated Payments; and Agreement with Educational Institution.

OMB Control Number: 2900–0636.

Type of Review: Revision of a currently approved collection.

Abstract: A claimant who wishes to receive an accelerated payment of educational assistance under the Montgomery GI Bill (MGIB) must elect to do so. VA uses the request to support the claimant's election and to determine whether the claimant wants this option over the established monthly payments. The claimant is required to report that the payment was received and how the payment was used. In addition, schools are allowed to receive an advance MGIB accelerated payment on behalf of a claimant enrolled at that institution.

Affected Public: Individuals or household.

Estimated Annual Burden: 1,086 hours.

a. Request for Accelerated Payment—167 hours.

b. Certifications Required from Individuals Electing Accelerated Payments—833 hours.

c. Agreement with Educational Institutions—86 hours.

Estimated Average Burden per Respondent:

a. Request for Accelerated Payment—1 minute.

b. Certifications Required from Individuals Electing Accelerated Payments—5 minutes.

c. Agreement with Educational Institutions—3 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 13,727

a. Request for Accelerated Payment—6,000.

b. Certifications Required from Individuals Electing Accelerated Payments—6,000.

c. Agreement with Educational Institutions—1,727.

Estimated Annual Responses: 21,727.

a. Request for Accelerated Payment—10,000.

b. Certifications Required from Individuals Electing Accelerated Payments—10,000.

c. Agreement with Educational Institutions—1,727.

Dated: June 23, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–16864 Filed 7–2–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 128

Thursday, July 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2003–15404]

RIN 1625–ZA00

Navigation and Navigable Waters—Technical, Organizational, and Conforming Amendments

Correction

In rule document 03–15742 beginning on page 37738 in the issue of Wednesday, June 25, 2003, make the following correction:

§165.151 [Corrected]

On page 37741, in §165.151, in the third column, in amendatory instruction j., in the eighth line ''072°05″23‴'' should read ''072°05′23‴''.

[FR Doc. C3–15742 Filed 7–2–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
July 3, 2003

Part II

Nuclear Regulatory Commission

10 CFR Part 2, et al.

Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 20, 21, 50, 51, 52, 72, 73, 140, and 170

RIN 3150–AG24

Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is proposing to amend its requirements for early site permits, standard design certifications, combined licenses for nuclear power plants, and for other licensing processes. The amendments are based on the NRC staff's experience with the previous design certification reviews and on discussions with stakeholders about the early site permit (ESP), design certification, and combined license (COL) processes. This action is expected to improve the effectiveness of the licensing processes for future applicants.

DATES: Submit comments by September 16, 2003. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AG24 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–3145, email *jnw@nrc.gov*; or Nanette V. Gilles, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1180, e-mail *nvg@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Reorganization of 10 CFR Part 52.
III. Discussion of Substantive Changes.
A. 10 CFR Part 52, Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants.
General Provisions.
Early Site Permits.
Early Site Reviews.
Standard Design Certifications.
Design Certification Backfit Requirement.
Standard Design Approvals.
Combined Licenses.
Referencing an Early Site Permit.
Testing Requirements for Advanced Reactors.
Probabilistic Risk Assessments.
Resolution of ITAAC.
Commission Finding on Acceptance Criteria.
Combined License Change Process.
Design Certifications for ABWR, System 80+, and AP600.
B. 10 CFR Part 2, Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders.
C. 10 CFR Part 20, Standards for Protection Against Radiation.
D. 10 CFR Part 21, Reporting of Defects and Noncompliance.
E. 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities.
F. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.
G. 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.
H. 10 CFR Part 73, Physical Protection of Plants and Materials.
I. 10 CFR Part 140, Financial Protection Requirements and Indemnity Agreements.
J. 10 CFR Part 170, Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended.
IV. Specific Requests for Comments.
V. Availability of Documents.
VI. Plain Language.
VII. Voluntary Consensus Standards.
VIII.Environmental Impact'Categorical Exclusion.
IX. Paperwork Reduction Act Statement.
X. Regulatory Analysis.
XI. Regulatory Flexibility Certification.
XII. Backfit Analysis.

I. Background

The Commission promulgated 10 CFR part 52 on April 18, 1989 (54 FR 15386), to reform the licensing process for future nuclear power plant applicants. The rule added alternative licensing processes in 10 CFR part 52 for early site permits, standard design certifications, and combined licenses. These were additions to the two-step licensing process that already existed in 10 CFR part 50. The processes in 10 CFR part 52 resolve safety and environmental issues early in licensing proceedings and are intended to enhance the safety and reliability of nuclear power plants through standardization. The rule also moved the licensing processes in appendices M, N, O, and Q of 10 CFR part 50 to 10 CFR part 52. Subsequently, the NRC certified three nuclear plant designs under subpart B of 10 CFR part 52—the U.S. Advanced Boiling Water Reactor (ABWR) (62 FR 25827, May 12, 1997), System 80+ (62 FR 27867, May 21, 1997), and AP600 (64 FR 72015, December 23, 1999) designs—and codified these designs in Appendices A, B, and C of 10 CFR part 52, respectively.

The NRC had planned to update 10 CFR part 52 after using the design certification process for these three certified standard plant designs. In addition, discussions with stakeholders at public meetings and comments on SECY–00–0092, ''Combined License Review Process,'' dated April 20, 2000, identified licensing issues associated with subparts A and C of 10 CFR part 52. As a result, the NRC initiated this proposed rulemaking to (1) clarify and/

or correct 10 CFR parts 2, 20, 21, 50, 51, 52 (including appendices A, B, and C), 72, 73, 140, and 170; (2) update 10 CFR part 52; and (3) incorporate stakeholder comments.

This rulemaking action began with the issuance of SECY–98–282, ''part 52 Rulemaking Plan,'' on December 4, 1998. The Commission issued a staff requirements memorandum on January 14, 1999, approving the NRC staff's plan for revising 10 CFR part 52. A notice of the rulemaking plan was added to the NRC's rulemaking Web site on June 16, 1999. On September 3, 1999, letters were sent to 10 external stakeholders alerting them to this proposed rulemaking. In addition, the NRC staff held three public meetings with interested stakeholders on the 10 CFR part 52 rulemaking on December 14, 2000, February 16, 2001, and March 7, 2001. Following those meetings, on April 3, 2001, the Nuclear Energy Institute (NEI) submitted comments on issues discussed during the meetings.

On September 27, 2001, the NRC staff posted draft rule language for 10 CFR part 52 on the NRC's rulemaking Web site. The NRC received comments on the draft rule language in November 2001, from General Electric, Entergy, NEI, Westinghouse Electric, and Exelon Generation. The NRC staff has considered these comments in the development of this proposed rule and posted revised draft rule language for 10 CFR part 52 on the NRC's rulemaking Web site on February 28, 2002.

II. Reorganization of 10 CFR Part 52

The NRC is proposing to reorganize 10 CFR part 52 to establish a separate subpart for each of the seven licensing processes currently described in 10 CFR part 52 (early site permits, early site reviews, standard design certification, standard design approvals, combined licenses, manufacturing licenses, and duplicate design licenses). The purpose of this reorganization is to clarify that each licensing process has equal standing. In addition, several subparts would be reserved for future licensing processes. No substantive changes are intended by the incorporation of current appendices M, N, O, and Q into the new subparts in 10 CFR Part 52.

The NRC is also proposing to retitle 10 CFR part 52 as ''Additional Licensing Processes for Nuclear Power Plants,'' to clarify that the licensing processes in 10 CFR part 52 are in addition to and supplement the two-step licensing process in 10 CFR part 50 and the license renewal process in 10 CFR part 54, and are not limited to the early site permit, standard design certification, and combined license processes as the current title implies.

The proposed rule would amend § 52.1 to clarify that all seven licensing processes are within the scope of 10 CFR part 52. Paragraphs within current Appendices M, N, O, and Q would also become new sections of the revised part. In addition, the proposed rule would reserve subparts for future licensing processes. In doing so, the NRC hopes to convey that 10 CFR part 52 is the preferred location in 10 CFR for nuclear power plant licensing processes.

The proposed rule would amend § 52.19, the current § 52.49 (proposed § 52.111), and the current § 52.83 (proposed § 52.215) to provide a standard format in subparts A, D, and G. This standard format would set forth the standards for review of applications and the applicability of NRC requirements in a consistent manner in each of these subparts. The references to the part 170 fee requirements would be moved to be included in the sections on filing of applications. This reorganization of 10 CFR part 52 will make the subparts on early site permits and standard design certifications consistent with the existing arrangement in the subpart for combined licenses.

The proposed rule would also move the requirement on duration of a combined license that is currently located in § 52.83, ''Applicability of part 50 provisions,'' to paragraph (e) of proposed § 52.227, ''Issuance of combined licenses.'' Proposed § 52.227(e) is a more appropriate location for this requirement.

The Commission has prepared the following table that cross-references the new proposed provisions in 10 CFR part 52 to the superseded provisions of 10 CFR part 52.

TABLE 1.—CROSS-REFERENCES BETWEEN NEW AND OLD 10 CFR PART 52

New section	Old section
General Provisions:	
52.1	52.1
52.3	52.3
52.5	52.5
52.8	52.8
None	52.9
Subpart A—Early Site Permits:	
52.11	52.11
52.13	52.13
52.15	52.15
52.17	52.17
52.18	52.18
52.19	52.19
52.21	52.21
52.23	52.23
52.24	52.24
52.25	52.25
52.27	52.27
52.29	52.29
52.31	52.31
52.33	52.33
52.35	52.35
52.37	52.37
52.39	52.39
Subpart B—Early Site Reviews:	
52.41	App. Q, Introduction
52.43(a)	App. Q, Paragraph 1
52.43(b)	App. Q, Paragraph 2
52.43(c)	App. Q, Paragraph 1
52.45	App. Q, Paragraph 3
52.46	N/A
52.47(a)	App. Q, Paragraph 4
52.47(b)	App. Q, Paragraph 5
52.47(c)	App. Q, Paragraph 6
52.49	App. Q, Paragraph 7
Subpart D—Standard Design Certification:	
52.101	52.41
52.103	52.43
52.105	52.45
52.107	52.47
52.109	52.48
52.111	52.49
52.113	52.51
52.115	52.53
52.117	52.54
52.119	52.55
52.121	52.57
52.123	52.59
52.125	52.61
52.127	52.63
Subpart E—Standard Design Approvals:	
52.131	App. O, Introduction
52.133(a)	App. O, Paragraph 1
52.133(b)	App. O, Paragraph 2
52.135	App. O, Paragraph 3
52.137	App. O, Paragraph 4
52.139(a)	App. O, Paragraph 5
52.139(b)	None
52.141(a)	App. O, Paragraph 5
52.141(b)	App. O, Paragraph 6
52.143	App. O, Paragraph 7
Subpart G—Combined Licenses:	
52.201	52.71
52.203	52.73
52.205	52.75
52.207	52.77
52.209	52.78
52.211	52.79
52.213	52.81
52.215	52.83
52.217	52.85
52.219	52.87
52.221	52.89
52.223	52.91
52.225	52.93
52.227	52.97
52.229	52.99
52.231	52.103
Subpart H—Manufacturing Licenses:	
52.241	App. M, Introduction

TABLE 1.—CROSS-REFERENCES BETWEEN NEW AND OLD 10 CFR PART 52—Continued

New section	Old section
52.243(a)	N/A
52.243(b)	App. M, Paragraph 7
52.243(c)	App. M, Paragraph 9
52.243(d)	App. M, Paragraph 10
52.243(e)	App. M, Paragraph 11
52.243(f)	App. M, Paragraph 8
52.245(a)	App. M, Paragraph 2
52.245(b)	App. M, Paragraph 3
52.245(c)	App. M, Paragraph 4(b)
52.247	App. M, Paragraph 1
52.249	App. M, Paragraph 4(a)
52.251	N/A
52.253 (a) & (b)	App. M, Paragraph 5
52.253(c)	App. M, Paragraph 6
52.255	N/A
52.257	App. M, Paragraph 12
Subpart I—Duplicate Design Licenses:	
52.261	App. N, Introduction
52.263	App. N, Paragraph 1
52.265	App. N, Paragraph 2
52.265(c)	App. N, Paragraph 3
Subpart M—Enforcement:	
52.401	52.111
52.403	52.113

III. Discussion of Substantive Changes

A section-by-section analysis that explains the purpose and meaning of all sections in 10 CFR part 52 will be provided in the supplementary information for the final rule. The proposed rule makes the following substantive changes:

A. 10 CFR Part 52, Early Site Permits, Standard Design Certifications, and Combined Licenses for Nuclear Power Plants

General Provisions

The proposed rule would amend § 52.3 to add definitions for ''modular design'' and ''prototype plant'' to the current 10 CFR part 52. A definition of modular design is added to explain the type of modular reactor design to which the Commission intended to refer to in the second sentence of the current § 52.103(g) (proposed § 52.231(g)). This special provision for modular designs was added to 10 CFR part 52 to facilitate the licensing of nuclear plants, such as the Modular High Temperature Gas-Cooled Reactor (MHTGR) and Power Reactor Innovative Small Module (PRISM) designs, that consisted of 3 or 4 nuclear reactors in a single power block with a shared power conversion system. During the period that the power block is under construction, the Commission could separately authorize operation for each nuclear reactor when each reactor and all of its necessary support systems were completed. In a letter dated November 13, 2001 (comment A), NEI stated that ''Part 1 of the definition would need to be revised for this purpose so that it does not describe typical multi-unit sites. The NRC staff should reconsider the need to define this term at all.'' The Commission disagrees with NEI's recommendation because the term ''modular design'' needs to be defined to aid future use of the current § 52.103(g) (proposed § 52.231(g)) by distinguishing the intended definition from other definitions for ''modular design.'' Currently licensed multi-unit sites would not be affected by the proposed § 52.231(g). However, future applicants for a combined license for a multi-unit site similar in concept to current multi-unit sites (where each unit is similar in design but independent of all other units) could also use this provision.

A definition for prototype plant is added to explain the type of nuclear reactor that the Commission intended in the current § 52.47(b) (proposed § 52.107(b)) and intends in the proposed § 52.211(b)(3). A prototype plant is a licensed nuclear reactor test facility that is similar to and representative of either the first-of-a-kind or certified nuclear plant design in all features and size, but may have additional safety features. The purpose of the prototype plant is to perform testing of new or innovative design features for the first-of-a-kind or certified, advanced nuclear plant design, as well as being used as a commercial nuclear power facility.

The proposed rule would remove §§ 52.5 and 52.9 and replace them with a new § 52.5 listing all of the licensing provisions in 10 CFR part 50 that also apply to all of the licensing processes in 10 CFR part 52. The purpose of this amendment is to clarify that these 10 CFR part 50 provisions are applicable to the licensing processes that were formerly in 10 CFR part 50 (Appendices M, N, O, and Q) and are now in 10 CFR part 52, as well as to the new licensing processes for early site permits, standard design certifications, and combined licenses. Although these provisions in 10 CFR part 50 may not refer to the additional licensing processes in 10 CFR part 52, the new § 52.5 makes it clear that a holder of or applicant for an approval, certification, permit, site report, or license issued under 10 CFR part 52 must comply with all requirements in these provisions that are otherwise applicable to applicants or licensees under 10 CFR part 50.

In a letter dated November 13, 2001 (comment G), NEI stated:

> The industry proposes that additional General Provisions be added to part 52 in addition to an appropriate provision on Written Communications. This approach is preferable to including cross-references in part 52 to part 50 general provisions because these provisions typically must be tailored to apply appropriately to the variety of licensing processes in part 52.

The Commission disagrees with the industry's proposal to create over 35 new general provisions that are tailored for 10 CFR part 52 because it would appear to be an inefficient and burdensome addition. Therefore, the Commission is proposing a new § 52.5 that would make the existing general provisions in 10 CFR part 50 applicable to the licensing processes in 10 CFR part 52.

Early Site Permits

The proposed rule would amend § 52.13 to state that an early site permit can also be referenced in an application for a combined license or a duplicate design license.

The proposed rule would amend § 52.17(a)(1) to state that the early site permit application should specify the range of facilities that the applicant is requesting the site to be qualified for (*e.g.* one, two, or three pressurized-water reactors). This new language is consistent with the language in Paragraph 2 of current Appendix Q. The Commission assumes that an applicant for an early site permit does not know what type of nuclear plant it will build at the site. Therefore, the application must specify the postulated design parameters for the range of reactor types, the numbers of reactors, etc., to increase the likelihood that the site will be qualified for the actual plant or plants that the applicant decides to build. In a letter dated November 13, 2001 (comment 27), NEI stated, ''The proposed change is too limited. To address the required assessment of major SSCs [structures, systems, and components] that bear on radiological consequences and all items 52.17(a)(1)(i–viii), industry recommends a new § 52.17a.2.'' The Commission disagrees with NEI's proposal to have a separate provision for applicants who have not determined the type of plant that they plan to build at the proposed site. The Commission expects that applicants for an early site permit will not have decided on a particular type of nuclear power plant and § 52.17(a)(1) was revised to address this situation.

The Commission proposes to amend § 52.17(a)(2) to clarify that an ESP applicant has the flexibility of either addressing the matter of alternative energy sources in the environmental

report supporting its ESP application, or deferring the consideration of alternative energy sources to the time that the ESP is referenced in a licensing proceeding. The Commission believes the current regulations already afford the ESP applicant such flexibility, inasmuch as § 52.17(a)(2) states that the environmental report submitted in support of an ESP application must ''focus on the environmental effects of construction and operation of a reactor, or reactors * * *.'' The environmental report's discussion of alternative energy sources does not, per se, address the ''environmental effects of construction and operation of a reactor,'' which is one of the matters which must be addressed in an environmental impact statement (EIS). See 10 CFR 51.71(d); National Environmental Policy Act of 1969 (NEPA), § 102(2)(C) (i), (ii) and (v). Rather, alternative energy sources constitutes part of the discussion of reasonable alternatives to the proposed action, which is required by § 102(2)(C)(iii) of NEPA. See 10 CFR 51.71(e) n.4; 46 FR 39440 (August 3, 1981) (proposed rule eliminating consideration of need for power and alternative energy sources at operating license stage), at 39441 (first column). Accordingly, it is the Commission's view that § 52.17(a)(2) already provides the ESP applicant the flexibility of choosing to defer consideration of alternative energy sources to the time (if ever) that the ESP is referenced in a combined license or a construction permit application. The proposed rule clarifies that the ESP applicant may either include a discussion of alternative energy sources in its environmental report, or defer consideration of the matter. The Commission proposes to make a conforming amendment to §§ 52.18 and 52.21 to make clear that the NRC's EIS need not address need for power, or alternative energy sources (and therefore such matters may not be litigated) if the ESP applicant chooses not to address either or both of these matters in its environmental report. The Commission notes that both the environmental report and EIS for an ESP must address the benefits associated with issuance of the ESP (*e.g.*, early resolution of siting issues, early resolution of issues on the environmental impacts of construction and operation of a reactor(s) that fall within the site parameters, and ability of potential nuclear power plant licensees to ''bank'' sites on which nuclear power plants could be located, without obtaining a full construction permit or combined license). The benefits (and impacts) of issuing an ESP must always be addressed in the environmental report and EIS for an ESP, regardless of whether the ESP applicant chooses to defer, pursuant to § 52.17(a)(2), consideration of the benefits associated with the construction and operation of a nuclear power plant that may be located at the ESP site. This is because the ''benefits * * * of the proposed action'' for which the discussion may be deferred under §§ 52.17(a)(2) are the benefits associated with the construction and operation of a nuclear power plant that may be located at the ESP site; the benefits which may be deferred under § 52.17(a)(2) are entirely separate from the benefits of issuing an ESP. To put it another way, the proposed action of issuing an ESP is not the same as the ''proposed action'' of constructing and operating a nuclear power plant for which the discussion of benefits (including need for power) may be deferred under § 52.17(a)(2)[1]. With this clarification, the Commission does not believe that further changes to the language of §§ 52.17 and 52.18 are necessary.

The proposed rule would amend §§ 52.24 and 52.39 to clarify: (1) The information that the NRC must include in the early site permit when it is issued; (2) the matters accorded finality in any subsequent NRC review and proceeding for an application referencing the early site permit; and (3) the matters that may be challenged in a contention to be resolved in an adjudication, versus those matters that may be raised in a petition to be processed in accord with 10 CFR 2.206. Section 52.21 would be amended to clarify that an application referencing an early site permit must, in addition to showing that the design of the facility falls within the site parameters specified in the early site permit, demonstrate that all terms and conditions of the early site permit have been satisfied. Section 52.24 would also be amended to provide that the early site permit must state the site parameters, as well as the ''terms and conditions,'' of the early site permit, rather than the ''conditions and limitations'' as is currently provided. No substantive change in § 52.24 is intended by the proposed amendment; the change is proposed to provide consistency with § 52.39(a)(2) and paragraph (a)(2)(iii) of the current rule, which also refer to ''site parameters'' and ''terms and conditions.''

The proposed rule would add § 52.28 to state that transfer of an early site permit from its existing holder to a new applicant will be processed under 10 CFR 50.80, which contains provisions for transfer of licenses. In a letter dated November 13, 2001 (comment 19), NEI recommended that a new section be added to part 52 to clarify the process for transfer of an early site permit. The Commission has determined that a new section is not necessary because an early site permit is a partial construction permit and, therefore, is considered to be a license under the AEA. The Commission believes that the procedures and criteria for transfer of utilization facility licenses in 10 CFR 50.80 (and the procedures in subpart M of 10 CFR part 2 for the conduct of any hearing) should apply to the transfer of an early site permit.

Section 52.39(a) would be amended to uniformly refer to ''terms or conditions'' of an early site permit. Section 52.39(a)(1) would also be amended to remove the term, ''requirements,'' and clarify that the Commission may not change or impose new site characteristics, terms, or conditions on the early site permit, including emergency planning requirements, unless the special backfitting criteria in § 52.39(a)(1) are satisfied. No substantive change is intended by this clarification; the Commission believes that ''site characteristics, terms, or conditions'' of an early site permit more accurately describe the existing scope of matters subject to the special backfitting criteria in § 52.39(a)(1).

Early Site Reviews

The proposed rule would amend certain paragraphs of the current Appendix Q to 10 CFR part 52 (proposed §§ 52.41, 52.43, and 52.47) to clarify that an early site review can also be used in an application for a combined license or a duplicate design license.

Standard Design Certifications

The proposed rule would amend the current §§ 52.41 and 52.45 (proposed § 52.101 and § 52.105) to clarify that a certified design may be referenced in an application for a duplicate design license, as well as a combined license application, filed under part 52.

The proposed rule would remove the requirements currently located in §§ 52.43(c), 52.45(c), and 52.47(b)(2)(ii) because the Commission has decided not to require a final design approval (FDA) as a prerequisite for certification

[1] The Commission emphasizes that under § 52.17(a)(2), only the discussion of benefits (including need for power) of constructing and operating a nuclear power reactor (or reactors), and the discussion of alternative energy sources, may be deferred. The ER must always address the ''environmental impacts of construction and operation of a reactor, or reactors, which have characteristics which fall within the postulated site parameters.''

of a standard plant design under the new subpart D of 10 CFR part 52. This requirement was included in 10 CFR part 52 because, at the time of the original rulemaking, the NRC had no experience with design certification applications. By requiring an FDA as a prerequisite for certification, the NRC indicated that the licensing processes for design certifications and FDAs were similar, even though the requirements for and finality of design certifications differ from that of FDAs. The NRC has considerable experience with design certification applications and the requirement to apply for an FDA as part of an application for design certification is no longer needed.

In a letter dated April 3, 2001 (comment 2), NEI commented ''Industry prefers to retain modified provisions. We agree that an FDA should be an option but not a prerequisite. Also, deletion recommended for 52.47(b)(2)(ii).'' The Commission has decided not to retain these provisions. The proposed processes in subparts D and E allow future applicants for design certification the option to apply for an FDA for the same design information.

The proposed rule would also amend the current § 52.45(d) (proposed § 52.105(c)) to correct the reference to the filing requirements in § 50.30(a) and delete the reference to § 50.4. The applicability of the requirements in § 50.4 is set forth in the new § 52.5. No substantive change in the filing requirements is intended by this correction.

The proposed rule would amend the current § 52.47 (proposed § 52.107) to conform the statement of the requirements for acceptable inspections, tests, analyses, and acceptance criteria (ITAAC) in § 52.107 with the Atomic Energy Act (AEA) and the requirements in the current § 52.97(b) [proposed § 52.227(b)]. This clarification of the previous regulatory text, which condensed the language in § 52.79(c) and § 52.97(b), is intended to avoid any future misunderstandings.

Design Certification Backfit Requirement

The proposed rule would amend the special backfit requirement in the current § 52.63(a)(1) (proposed § 52.127(a)(1)) to provide the Commission with the ability to make changes to the design certification rules or the certification information in the generic design control documents that reduce unnecessary regulatory burdens. Section 52.63(a)(1) currently states that the Commission may not modify, rescind, or impose new requirements on the certification unless the change is: (1) Necessary for compliance with Commission regulations applicable and in effect at the time the certification was issued, or (2) necessary to provide adequate protection of the public health and safety or common defense and security. The regulation does not appear, on its face, to permit changes to the certification which reduce unnecessary regulatory burdens, in circumstances where the change continues to maintain protection to public health and safety and common defense and security. An example of a change which may not be able to be made under the current § 52.63(a)(1) is a proposed change to the three design certification rules in Appendices A, B and C of 10 CFR part 52, to incorporate into the Tier 2 change process the revised change criteria in 10 CFR 50.59. Section 50.59 was revised in 1999 to provide new criteria for, *inter alia,* making changes to a facility, as described in the final safety analysis report, without prior NRC approval, in order to reduce unnecessary regulatory burden (64 FR 53582, October 4, 1999).

To allow the Commission to modify the design certification rules in 10 CFR part 52 to incorporate the revised § 50.59 change criteria, and to allow the Commission to make future changes to reduce unnecessary regulatory burden, the Commission is proposing to amend § 52.127(a)(1) to include a new provision that explicitly allows the Commission to change the design certification rules or certification information if the change provides a reduction in regulatory burden and maintains protection to public health and safety and common defense and security. Maintaining protection generally embodies the same safety principles used by the NRC in applying risk-informed decision making, *e.g.*, ensuring that adequate protection is provided, applicable regulations are met, sufficient safety margins are maintained, defense-in-depth is maintained, and that any changes in risk are small and consistent with the Commission's Safety Goal Policy Statement (refer to NRC's Regulatory Guide 1.174). Changes to the design certification rules must be accomplished through rulemaking, with opportunity for public comment. Once a design certification rule is changed through rulemaking, under proposed § 52.127(a)(2) the provisions would apply to all future applications referencing the design certification rule as well as all current plans referencing the design certification, unless the change has been rendered ''technically irrelevant'' through other action taken under paragraphs (a)(3) or (b)(1) of § 52.127. Thus, standardization is maintained by ensuring that any changes to a design certification rule intended to reduce regulatory burden are imposed upon all nuclear power plants referencing the design certification rule.

In a letter dated November 13, 2001, NEI stated:

> Furthermore, we do not think it is necessary to modify 10 CFR 52.63(a)(1) in order to make conforming, administrative or similar changes to the DCRs, such as those needed to conform the DCRs to the revised 10 CFR 50.59. Nor do we think the Commission intended the DCR backfit provisions to inhibit these types of changes. Rather, we believe 10 CFR 52.63(a)(1) is intended to apply to changes in the standard design approved via the DCR. We recommend the Commission clarify this intent and provide guidance to the NRC staff allowing certain changes to the DCRs (such as those needed to conform to the revised 10 CFR 50.59) within the existing DCR backfit provisions.

The Commission received similar comments from General Electric Company, Entergy, and Exelon in November 2001. The Commission disagrees with these comments and has concluded that it is necessary to amend § 52.63(a)(1) to allow changes to the design certification rules that reduce unnecessary regulatory burden, or do not constitute a backfit.

The current § 52.63(a)(1) (proposed § 52.127(a)(1)) was also modified to replace ''a modification'' with ''the change,'' in order to clarify that the three criteria for changes apply to modifications, rescissions or imposition of new requirements. Also, the Commission is clarifying the proposed § 52.127 to be consistent with its original intent (refer to 54 FR 15372; April 18, 1989) that the special backfit requirements apply to the certification information in the generic design control documents, not to the provisions in the design certification rules, *e.g.*, Section VI.E of Appendix A to 10 CFR part 52. Any proposed changes to these provisions that set forth how the design certification rules are to be used are controlled by the normal backfit requirements in 10 CFR 50.109.

The proposed rule would amend the current § 52.63(a)(2) (proposed § 52.127(a)(2)) to delete the reference to § 52.63(a)(4) (proposed § 52.127(a)(4)). The reference to § 52.63(a)(4) was in error because this paragraph discusses the finality of the findings required for issuance of a combined license or operating license, whereas § 52.63(a)(2) deals with modifications that the NRC may impose on a design certification rule under § 52.63(a)(3) or § 52.63(b)(1)

(proposed § 52.127(a)(3) or § 52.127(b)(1)). No substantive change is intended by the amendment which merely clarifies the original intent of the rule.

Standard Design Approvals

The proposed rule would amend the current Section 3 of Appendix O to 10 CFR part 52 (proposed § 52.135) to clarify that applications for standard design approvals should contain all of the applicable technical information required by § 50.34. The amendment would also require applications for standard design approvals to provide the same technical information required for applications for standard design certifications (*e.g.*, demonstration of compliance with any technically relevant Three Mile Island requirements, proposed technical resolutions of unresolved safety issues and medium- and high-priority generic safety issues, and a design-specific probabilistic risk assessment (PRA)). This clarification is consistent with past practice regarding applications for future designs and would implement the Commission's Policy Statements on Severe Reactor Accidents (50 FR 32138, August 8, 1985) and Nuclear Power Plant Standardization (52 FR 34884, September 15, 1987). This amendment would not require applicants to provide proposed ITAAC because standard design approvals are referenced in applications for construction permits and operating licenses under 10 CFR part 50, and the verification process used for 10 CFR Part 50 applications does not use ITAAC.

The proposed rule would amend the current Appendix O to 10 CFR Part 52 (proposed § 52.139) to specify that the duration of a standard design approval is for 15 years. In a letter dated November 13, 2001 (comment 18.a), NEI commented:

> Industry recommends FDAs be valid for 15 years. This is consistent with Commission direction in COMSECY–94–025 to update the lead plant FDA to provide a 15 year duration instead of the five years initially provided. The ABWR and System 80+ FDAs were so revised in 1994; the designs were certified in 1997.

The Commission agrees with industry's recommendation. The final design approvals (FDAs) for the three certified designs were originally issued for a five year duration, in accordance with the Commission's Policy Statement on Standardization of Nuclear Power Plants (43 FR 38954, August 31, 1978). Only after design certifications were issued for the ABWR and the System 80+ designs did the Commission direct, for consistency, that the FDAs be revised to provide the same term as for the design certification. These actions did not change the Commission's policy for FDAs issued by themselves. The Commission has now decided that the duration of standard design approvals should correspond to the duration of design certifications. The Commission has not identified any compelling technical or policy considerations that would lead the Commission to maintain a shorter effective time period for an FDA as compared to a design certification.

Combined Licenses

The proposed rule would amend the current § 52.73 (proposed § 52.203(a)) to clarify that a site report issued under proposed subpart B of 10 CFR part 52 may also be referenced in an application for a combined license application filed under 10 CFR part 52. This amendment would also add the requirements in the current § 52.63(c) (proposed § 52.127(c)) to the new § 52.203(b) to clarify that this requirement applies to applicants for a combined license. This provision requires that, prior to granting a combined license which references a standard design certification, information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certified design. No substantive change is intended by the restatement of this requirement. In a letter dated April 3, 2001 (comments 3 and 3.a), NEI agreed with the proposed change but recommended that the last sentence of § 52.63(c) be deleted and the remaining provision be added to the current § 52.79 rather than the current § 52.73. The Commission agrees with NEI that 10 CFR part 52 should be modified to clarify that the requirement in current § 52.63(c) applies to applicants for a combined license, and that the last sentence be deleted. However, the Commission is adding the remaining provision to what was § 52.73(b) (proposed § 52.203(b)) and not to § 52.79 (proposed § 52.211) as recommended by NEI.

The proposed rule would amend the current § 52.78 (proposed § 52.209) to clarify the requirements applicable to an applicant for, and holder of, a combined license with respect to the training program required by 10 CFR 50.120. As currently written, § 52.78 simply indicates that the application must demonstrate compliance with the training program requirements in § 50.120. There is no explicit requirement with respect to the applicant/licensee to implement the training program. Furthermore, proposed § 52.215(b) indicates that, after a combined license is issued but before the Commission has authorized operation under § 52.231, the combined license holder shall comply with all requirements in Title 10 of the Code of Federal Regulations applicable to holders of construction permits for nuclear power reactors. However, § 50.120 refers to a ''nuclear power plant applicant;'' therefore, § 50.120 would not apply to a combined license holder even under the language of proposed § 52.215(b).

To remove any ambiguity in this matter, the Commission is proposing to revise in its entirety the language in current § 52.78, which is being re-designated as § 52.209. The proposed rule provides that the application must ''describe'' the training program required by § 50.120. In addition, the proposed rule states that the training program described in the application must be ''established, implemented, and maintained'' no later than eighteen (18) months prior to the scheduled date for initial loading of fuel, as provided for in § 52.231(a). By ''established [and] implemented'', the Commission intends to distinguish between the requirement to merely ''describe'' the training program in the application, versus the requirement for the combined license holder to establish (*e.g.*, establish a training organization, fill staff positions, write procedures, etc.) and implement (*i.e.*, perform training of applicable operating plant personnel in accordance with § 50.120) the training program. The proposed rule also clarifies that the eighteen (18) month period by which the training program must be established and implemented is measured from the combined licensee's scheduled date for fuel load under proposed § 52.231(a) (current § 52.103(a)).

Referencing an Early Site Permit

The proposed rule would amend current §§ 52.39 and 52.79 (proposed § 52.211) to require a license applicant referencing an early site permit to update and correct the emergency preparedness information provided under § 52.17(b). The issue of updating an early site permit was first raised by the Illinois Department of Nuclear Safety, who suggested in a September 28, 1994 letter that emergency plans and/or offsite certifications approved as part of an early site permit review be kept up-to-date throughout the duration of an early site permit and the

construction phase of a combined license. In SECY–95–090, ''Emergency Planning Under 10 CFR part 52,'' (April 11, 1995), the NRC staff stated that 10 CFR part 52 does not clearly require an applicant referencing an early site permit to submit updated information on changes in emergency preparedness information and any emergency plans that were approved as part of the early site permit in accordance with § 52.18. SECY–95–090 indicated (p. 4) that, in view of the lack of industry interest in pursuing an early site permit, resolution of this matter may be deferred until a ''lessons learned'' rulemaking updating 10 CFR part 52 is conducted after the first design certification rulemakings are issued. Following public release of a draft SECY paper setting forth the NRC staff's preliminary views on the licensing process for a combined license, the Nuclear Energy Institute (NEI) submitted a letter dated September 8, 1998 (comment 2.d), expressing NEI's opposition to a requirement for updating emergency preparedness information throughout the duration of an early site permit absent an application referencing the early site permit. As an alternative to updating throughout the duration of an early site permit, NEI proposed that emergency planning information be updated when an application for a license referencing the early site permit is filed; portions of the emergency plans that are unchanged would continue to have finality under 10 CFR 52.39. Thereafter, in a September 3, 1999 letter, the NRC staff identified updating of emergency preparedness information in early site permits as a possible subject for the part 52 rulemaking.

The Commission agrees with the Illinois Department of Nuclear Safety that the emergency preparedness information approved when the early site permit was issued must be updated if there is new information which may materially affect the Commission's earlier determination on emergency preparedness, or if the new information is needed to correct inaccuracies in the emergency preparedness information approved in the early site permit. In the absence of such an updating requirement, the NRC would bear the responsibility of identifying whether there is new information on emergency preparedness that necessitates a re-examination of the Commission's earlier emergency preparedness determinations for the early site permit, and the early site permit holder or applicant referencing the early site permit would be under no obligation to correct inaccurate emergency preparedness information in the early site permit or approved emergency plan. However, the Commission also agrees with NEI that a ''continuous'' early site permit update requirement would impose burdens upon the early site permit holder without any commensurate benefit if the early site permit is not subsequently referenced. Accordingly, the Commission has decided that § 52.39 and current § 52.79 (proposed § 52.211) should contain an updating requirement to be imposed upon the applicant referencing an early site permit.

The proposed rule redesignates paragraph (b) of current § 52.39 as paragraph (c), and adds a new paragraph (b) requiring an applicant for a construction permit, operating license, duplicate design license, or combined license whose application references an early site permit to update and correct the emergency preparedness information provided under § 52.17(b), and to discuss whether the new information may materially change the bases for compliance with the applicable NRC requirements. A parallel requirement is included in proposed § 52.211(d)(1) to ensure that applicants for combined licenses referencing an early site permit will submit the updated emergency preparedness information. New information which materially changes the bases for compliance includes: (1) Information which substantially alters the bases for a previous NRC conclusion with respect to the acceptability of a material aspect of emergency preparedness or an emergency preparedness plan, as well as (2) information which would constitute a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness in accordance with § 52.39(a)(1). New information which materially changes the Commission's determination of the matters in § 52.17(b), or results in modifications of existing terms and conditions under § 52.39(a)(1) would be subject to litigation during the construction permit, operating license, duplicate design license, or combined license proceedings in accordance with § 52.39(a)(2)(ii).

Not all new information on emergency preparedness would be subject to challenge in a hearing under § 52.39(a)(2)(ii). For example, an emergency plan may have to be updated to reflect current telephone numbers, the names of governmental officials whose positions and responsibilities are defined in the plan (*e.g.*, the name of the current police chief for a municipality), or the current name of a hospital facility. Such corrections do not materially change the NRC's previously-stated bases for accepting the early site permit emergency plan; therefore, a hearing contention would not be admitted under § 52.39(a)(2)(ii) (or any other provision of § 52.39) in a proceeding for a license referencing the early site permit. By contrast, if an emergency plan submitted as part of an early site permit relies upon a bridge to provide the primary path of evacuation, and that bridge no longer exists, the change could materially affect the NRC's previous determination that the emergency plan complied with the Commission's emergency preparedness regulations in effect at the time of the issuance of the early site permit. Thus, such information may be the basis for a change in the early site permit's terms and conditions related to emergency preparedness under § 52.39(a)(1), as well as the basis for a hearing contention under § 52.39(a)(2)(ii)—assuming that the requirements in 10 CFR part 2 for admission of a contention are met.

An updating requirement for early site permit information other than emergency preparedness information does not appear to be necessary, inasmuch as it is unlikely that there would be changes to the information previously submitted on the site, such that a significant change to the site characteristics, terms, and conditions would be necessary if requested under the provisions of § 52.39(a)(2). If the site does not conform to the characteristics of the early site permit, an interested person may submit a petition under § 52.39(a)(2)(ii) alleging that the site does not conform to the early site permit. Accordingly, the proposed rule does not include an updating requirement for other early site permit information.

The proposed rule would amend § 52.79(a)(1) (proposed § 52.211(a)(1)), which currently requires a combined license application referencing an early site permit to contain information demonstrating that the design of the facility falls within the parameters specified in the early site permit, and information needed to resolve any other significant environmental issue not considered in the proceeding on the referenced early site permit. Currently, § 52.79(a)(1) requires a combined license application referencing an early site permit to contain information demonstrating that the design of the facility falls within the site parameters specified in the early site permit. However, § 52.79(a) does not explicitly require the application to address whether the terms and conditions specified in the early site permit under

§ 52.24 have been met by the combined license holder, although this is implicit by the inclusion of any terms and conditions in the early site permit. To remove any ambiguity in this matter, the Commission is proposing to include a proposed § 52.211(a)(1)(iii) by requiring the application to address whether the terms and conditions specified in the early site permit under § 52.24 have been met (the Commission also proposes to rearrange paragraph (a)(1) by dividing the criteria to be met by an application referencing an early site permit into separate subdivisions (i), (ii), and (iii)). The Commission's intent, as reflected in the words, ''have been met,'' is that all terms and conditions will be met prior to issuance of the combined license.

Testing Requirements for Advanced Reactors

The proposed rule would amend the current § 52.79(b) (proposed § 52.211(b)) to revise the requirements for combined license applications that do not reference a design certification rule by adding the current § 52.47(b)(2) (proposed § 52.107(b)(2)) to the list of requirements in the proposed § 52.211(b)(1) that a combined license applicant must comply with. This amendment will provide consistency between the current advanced reactor testing requirements in subpart B of part 52 (§ 52.47(b)(2)) and the proposed testing requirements in the proposed subpart G of part 52 (§ 52.211(b)). This amendment will require a combined license applicant that references a custom advanced reactor design to also perform the design qualification testing required by the current § 52.47(b)(2) for design certification applicants. If a combined license application references a certified advanced reactor design, the qualification testing required by § 52.47(b)(2) will have been performed. The amendment also requires (proposed § 52.211(b)(3)) that if a licensed prototype plant (see definition in proposed § 52.3) is used to meet the qualification testing requirements in the current § 52.47(b)(2), additional requirements on siting, safety features, or operational conditions may be required for licensing, in order to compensate for uncertainties associated with the performance of new or innovative safety features in the prototype plant.

The codification of testing requirements in the current § 52.47(b)(2) was a principal issue in the development of 10 CFR part 52 (see Section II of 54 FR 15372; April 18, 1989). The testing requirements in § 52.47(b)(2), to demonstrate the performance of safety features for nuclear power plants that differ significantly from evolutionary light-water reactors or utilize simplified, inherent, passive, or other innovative means to accomplish their safety functions (advanced reactors), were included in 10 CFR part 52 to ensure that these safety features will perform as predicted in the applicant's safety analysis report, that the effects of systems interactions are acceptable, and to provide sufficient data to validate analytical codes. The design qualification testing requirements may be met with either separate effects or integral system tests; prototype tests; or a combination of tests, analyses, and operating experience. These requirements implement the Commission's policy on proof-of-performance testing for all advanced reactors (see 51 FR 24643; July 8, 1986) and the Commission's goal of resolving all design issues before authorizing construction.

During the development of 10 CFR part 52, the focus of the nuclear industry and the NRC staff was on applications for design certification. That is why the testing requirements to qualify new or innovative safety features was only included in subpart B of 10 CFR part 52, ''Standard Design Certifications.'' The tests to qualify a design feature are different than verification tests, which are required by § 52.79(c) and performed in accordance with section XI, ''Test Control,'' of Appendix B to 10 CFR part 50. Verification tests are used to provide assurance that construction and installation of equipment (as-built) in the facility has been accomplished in accordance with the approved design.

Exelon Generation and NEI commented on the addition of testing requirements for combined license applications, in letters dated November 13, 2001. NEI stated:

> COL application requirements in § 52.79(b)(1) have been modified to include a reference to the design certification application requirements of § 52.47(b)(2)(i). Under this proposal, an applicant seeking a COL for a non-certified design that differs significantly from typical light water reactors would have to demonstrate safety feature performance through either (A) analysis, testing, or experience, or (B) full-scale prototype testing. This requirement is entirely appropriate for design certification applicants. However, as discussed below, we believe it is unnecessary to apply these requirements to COL applicants, and that the potential requirement for full-scale prototype testing is particularly inappropriate.
>
> First, part 52 should not be modified to open the door to requiring a COL applicant, who does not reference a certified design, to build and complete testing of a full-scale prototype before the granting of the license. The potential to require prototype testing to support issuance of a COL is contrary to Commission guidance in the part 52 Statements of Consideration. The Commission clearly recognized ''licensing the prototype for commercial operation'' as a path open to applicants under subpart C of part 52 that could lessen the burden of having to demonstrate innovative designs through full scale prototype testing. We agree with the further statement by the Commission that, ''[i]t is well to remember also that, under the rule, prototype testing is required only for certification or an unconditional design approval, if at all.'' * * * In sum, through its existing requirements and regulatory authority, the NRC is assured of (1) Adequate information to support required COL reviews and safety determinations, and (2) satisfactory demonstration of innovative design features during startup and power ascension testing. The proposed new COL application requirements are unnecessary and should not be carried forward into the part 52 NOPR (Notice of Proposed Rulemaking).

The Commission disagrees with NEI and Exelon regarding the need to perform qualification testing for new or innovative safety features in all advanced reactor designs. The Commission reformed the licensing process for new nuclear plants with the issuance of 10 CFR part 52 in 1989 and required applicants to demonstrate that safety features will perform as predicted in their final safety analysis report. Although the focus of the NRC staff in 1989 was on applications for design certification, the Commission intended that testing to qualify design features (proof-of-performance testing) would be required for all advanced reactors, including custom designs (see Question 6 at 51 FR 24646; July 8, 1986). Furthermore, it would make no sense for the Commission to require testing for design certification (paper designs) and not require testing for applications to build and operate an actual advanced nuclear reactor.

Although the Commission has stated that it favors the use of prototypical demonstration facilities and that prototype testing is likely to be required for certification of advanced non-light-water designs (see policy at 51 FR 24646; July 8, 1986 and Section II of 54 FR 15372 on 10 CFR part 52; April 18, 1989), the proposed rule does not mandate the use of a prototype plant. Rather, the proposed rule provides that if a prototype plant is used to qualify an advanced reactor design, then additional requirements may be required for licensing of the prototype to compensate for any uncertainties with the unproven safety features. Also, the prototype plant could be used for

commercial operation. Therefore, the Commission proposes to amend § 52.79(b) (proposed § 52.211(b)) to implement its original intent in adopting 10 CFR Part 52 and its policy on advanced reactors that it is necessary to demonstrate the performance of new or innovative safety features through design qualification testing for all advanced nuclear reactors.

Probabilistic Risk Assessments

The proposed rule would also amend the current § 52.79(b) (proposed § 52.211(b)) to adopt a requirement to submit a plant-specific PRA as part of an application for a combined license. The current § 52.79(b) references § 52.47(a)(1)(v), which requires a design-specific PRA within a design certification application. This amendment (§ 52.211(b)(2)) would require an application for a combined license to contain a plant-specific PRA that covers all of the nuclear plant design, including site-specific design features (*e.g.,* the ultimate heat sink). If the combined license application referenced a certified design, this amendment (§ 52.211(b)(5)) would require the design-specific PRA to be updated to include site-specific design features and to account for any design changes. In a letter dated April 3, 2001 (comment 11.1a), NEI stated ''we agree on the NRC vision for a plant-specific PRA at COL that supplements the DC PRA with any changes that affect the DC PRA plus site-specific (interface) design information.''

The purpose of the requirement for a plant-specific PRA is to identify and address potential design and operational vulnerabilities, gain insights about the risk of the design, assess the balance between preventive and mitigative features in the design, to determine quantitatively whether the design represents a reduction in risk over current operating plants, and to determine how the risk associated with the new design relates to the Commission's safety goals. Accordingly, the Commission proposes to amend § 52.211(b) to require an application for a combined license to contain a plant-specific PRA.

Resolution of ITAAC

The proposed rule would amend the current § 52.79(c) (proposed § 52.211(c)), current § 52.97(a) (proposed § 52.227(a)), current § 52.99 (proposed § 52.229(e)), and current §§ 52.103(a) and (g) (proposed §§ 52.231(a) and (g)) to provide an applicant for a combined license with a process for resolving certain acceptance criteria in one or more of the ITAAC required by the proposed § 52.211(c) before issuance of the combined license. In a letter dated November 13, 2001 (comment 20), NEI recommended that Subpart C be revised to allow for completion of design acceptance criteria (DAC) at the COL application stage. NEI made this recommendation because applicants might want to complete certain DAC before construction. DAC are special design certification rule ITAAC. DAC set forth processes and criteria for completing certain design information, such as information about the digital instrumentation and control system. DAC were originally written to be verified as part of the normal, post-combined license, ITAAC verification process.

The Commission agrees with NEI's recommendation that combined license applicants be permitted to demonstrate DAC completion as part of the combined license application, for several reasons. First, completion of the design matters covered by DAC before the issuance of a combined license is consistent with the Commission's original concept for design certification and issuance of a combined license. When it adopted 10 CFR part 52, the Commission intended that a design certification contain final and complete design information. Allowing a finding of acceptable completion of DAC before issuance of a combined license is, therefore, consistent with the Commission's original intent. Second, completion of DAC before issuance of the combined license is consistent with the Commission's goal of resolving issues before construction. Determining whether DAC have been successfully completed before issuance of the combined license avoids the possibility that improperly completed DAC will result in the construction of improperly designed structures, systems, and components. Finally, the Commission believes that completion of DAC before issuance of the combined license will enhance public confidence in the overall licensing process because the public will have an opportunity to challenge whether the design has been properly completed before construction begins. Accordingly, the Commission proposes that a finding of successful completion of DAC may be made when a combined license is issued, if the combined license applicant demonstrates that the DAC have been successfully completed. This new process would also allow findings on successful completion of inspections or tests of components procured before the issuance of the combined license.

The proposed rule would also amend the current § 52.99 (proposed § 52.229 (b), (c) and (d)) and the current § 52.103 (proposed § 52.231(h)) to incorporate rule language from the design certification rules in 10 CFR part 52 regarding the completion of ITAAC (see paragraphs IX.A and IX.B.3 of Appendix A to part 52). During the preparation of the design certification rules for the ABWR and System 80+ designs, the NRC staff and nuclear industry representatives agreed on certain requirements for the performance and completion of the inspections, tests, or analyses in ITAAC. In the design certification rulemakings, the Commission codified these ITAAC requirements into Section IX of the rules. The purpose of the requirement in paragraph (b) of proposed § 52.229 is to make it clear that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been successfully completed. Paragraph (c) of proposed § 52.229 requires the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met. Paragraph (d) simply states the options that a licensee will have in the event that it is determined that any of the acceptance criteria in the ITAAC have not been met. Finally, paragraph (h) of § 52.231 states that ITAAC do not, by virtue of their inclusion in the DCD, constitute regulatory requirements after the licensee has received authorization to load fuel or for renewal of the license. However, subsequent modifications must comply with the design descriptions in the design control document unless the applicable requirements in the current § 52.97 and Section VIII of the design certification rules have been complied with.

In a letter dated April 3, 2001 (comment 23), NEI stated ''consider incorporating DCR general provisions into subpart C as appropriate.'' The Commission has decided to add these ITAAC requirements to proposed § 52.229 because it believes that these provisions embody general principles that are applicable to all holders of combined licenses.

Commission Finding on Acceptance Criteria

The proposed rule would amend the current § 52.83 (proposed § 52.215) and the current § 52.99 (proposed § 52.229(e)) to clearly state the

Commission's determination that the NRC staff should be responsible for ensuring (through its inspection and audit activities) that the combined license holder performs and documents the completion of inspections, tests and analyses in the ITAAC. Currently, § 52.99 states that ''the Commission shall ensure that the required inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met.'' When part 52 was first adopted by the Commission in 1989 (54 FR 15372, April 18, 1989), § 52.99 provided that the NRC staff shall ensure that the inspections, tests and analyses in the ITAAC are performed, and did not refer to the Commission finding on acceptance criteria being met. The requirement for a Commission finding on acceptance criteria was contained in § 52.103(g). The Commission adopted the current language of § 52.99 in 1992 (57 FR 60975, December 23, 1992) to reflect changes to Section 185 of the AEA made by Congress in the Energy Policy Act of 1992 (1992 EPA), which states:

> Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met.

Thus, the revisions to § 52.99 adopted by the Commission in 1992 simply reflect the language of the 1992 EPA. However, the Commission does not believe that Congress, by adopting language in section 185 stating that the Commission shall ensure that the ITAAC are performed, intended to alter the Commission's determination that the NRC staff is responsible for ensuring that ''the required inspections, tests and analyses in the ITAAC are performed,'' and by doing so alter the Commission's long-standing delegation of inspection and oversight activities to the NRC staff. For these reasons, the Commission proposes that § 52.99 (proposed § 52.229(e)) state that the NRC staff shall be responsible for ensuring that inspections, tests and analyses in the ITAAC have been performed. The requirement for a Commission finding on acceptance criteria will continue to be addressed separately in § 52.103(g) (proposed § 52.231(g)).

In a letter dated February 22, 1993, the Nuclear Management and Resources Council, Inc. (NUMARC) stated:

> There is nothing in Title XXVIII or its legislative history which compels a change in the Staff responsibilities from that reflected in prior § 52.99. Indeed, any other implementation of § 52.99 would be wholly unworkable. Accordingly, it is our understanding that the reference to ''the Commission'' in amended § 52.99 is to be read as authorizing the Commission to delegate to the Staff the responsibility for overseeing ITAAC performance during the period of facility construction; and further that this is the Commission's intention. Responsibility for the pre-operational finding of acceptance criteria conformance would, of course, be the responsibility of the Commission, as reflected in both amended §§ 52.99 and 52.103(g).

The proposed rule is consistent with NUMARC's recommendation.

The requirements in the proposed § 52.229(e) will be limited to the responsibilities of the NRC staff. The staff will ensure that the inspections, tests, and analyses in the ITAAC have been performed and will publish notices in the **Federal Register** of the successful completion of inspections, tests, and analyses. The NRC staff will perform periodic inspections during construction of the facility and implementation of the licensee's operational programs, *e.g.*, emergency planning and training. The NRC staff will issue reports on these inspections and will make these reports publically available. At the conclusion of construction, the staff will make a recommendation to the Commission on its assessment of the licensee's completion of ITAAC. If the Commission determines that all of the acceptance criteria in the ITAAC for the combined license have been met, it will make the finding required under proposed § 52.231(g).

Consistent with the language in proposed § 52.229(e), the proposed rule would also amend the current § 52.83 (proposed § 52.215(c)) to state that the requirements in 10 CFR part 50 that are applicable to holders of operating licenses become applicable to holders of combined licenses after the Commission's finding of successful ITAAC completion under current § 52.103(g) (proposed § 52.231(g)), rather than referring to the Commission finding under the current § 52.99. As discussed above, the Commission's 1992 rulemaking amended § 52.99 to refer to the Commission's finding of ITAAC completion, and amended § 52.83 to refer to the Commission's finding under § 52.99. Inasmuch as the Commission finding and authorization of operation would be addressed in proposed § 52.231(g), it follows that proposed § 52.215(c) should refer to the Commission's authorization of operation under § 52.231(g) rather than the NRC staff's activities under proposed § 52.229(e).

Combined License Change Process

The proposed rule would amend the current § 52.97 (proposed § 52.227) to clarify the applicability of the change processes in 10 CFR part 50 and Section VIII of the design certification rules in 10 CFR part 52 to a combined license. This amendment will add § 52.227(c), which states that the change processes in 10 CFR part 50 apply to a combined license that does not reference a design certification rule. This amendment will also add § 52.227(d), which states that the change processes in Section VIII of the design certification rules apply to changes within the scope of the referenced certified design. However, if the proposed change affects the design information that is outside of the scope of the design certification rule, the part 50 change processes apply unless the change also affects the design certification information. For that situation, both change processes may apply.

In a letter dated November 13, 2001 (comment 21(a)(2)), NEI recommended that proposed §§ 52.227(c) and (d)(2) state that changes outside the scope of a certified design are subject to ''the applicable change control requirements in 10 CFR part 50, *e.g.*, 10 CFR 50.59, 50.54 or 50.90.'' The Commission has decided to propose this amendment to clarify which change processes are applicable to a combined license and this amendment is consistent with NEI's recommendation.

Design Certifications for ABWR, System 80+, and AP600

The proposed rule would amend paragraphs VI.B.4, 5, and 6 of the three design certification rules in 10 CFR part 52, Appendices A, B, and C (for U.S. ABWR, System 80+, and AP600 designs, respectively), by substituting the phrase ''but only for that plant'' for the erroneous phrase ''but only for that proceeding'' (emphasis added). The new phrase correctly characterizes the scope of issue resolution in three situations. Paragraph VI.B.4 describes how issues associated with a design certification rule are resolved when an exemption has been granted for a plant referencing the design certification rule. Paragraph VI.B.5 describes how issues are resolved when a plant referencing the design certification rule obtains a license amendment for a departure from Tier 2 information. Paragraph VI.B.6 describes how issues are resolved when the applicant or licensee departs from the Tier 2 information on the basis of paragraph VIII.B.5, which waives the requirement to get NRC approval. Thus, once a matter (*e.g.*, an exemption in the

case of paragraph VI.B.4) was addressed for a specific plant referencing a design certification rule, the adequacy of that matter for that plant would not ordinarily be subject to challenge in any subsequent proceeding or action (such as an enforcement action) listed in the introductory portion of paragraph IV.B, but there would not be any issue resolution on that subject matter for any other plant. Unfortunately, the three design certification rules use the phrase ''but only for that proceeding,'' which may lead to the erroneous conclusion that issue resolution exists only in the proceeding in which the matter was approved and/or adjudicated, and not in all subsequent proceedings for that plant.

In letters dated November 12, 2001, and November 13, 2001, respectively, General Electric Company and Westinghouse Electric Company reiterated earlier recommendations the two companies had made that Sections VI.B.4 and 5 of the design certification rules state that exemptions and license amendments have finality ''but only for that plant.'' For the reasons discussed above, the Commission agrees, and the Commission proposes to substitute the phrase ''but only for that plant,'' in order to clarify that issue resolution on a matter applies in subsequent proceedings for that plant.

Each of the design certification rules in 10 CFR part 52 (Appendices A, B, and C) includes a Section VIII on change processes. These processes apply to changes depending upon the category of design information affected. For plant-specific tier 2 information, the change process established in the rules mirrors, in large part, that in the former 10 CFR 50.59. The proposed rule would amend paragraph VIII.B.5 of the design certification rules to conform the terminology in the 50.59-like change process to that used in the revised § 50.59. This amendment deletes references to unreviewed safety question and safety evaluation, and conforms the evaluation criteria concerning when prior NRC approval is needed. Also, a definition has been added (paragraph II.G) for ''departure from a method of evaluation'' to support the evaluation criterion in VIII.B.5.b(8).

In an earlier rulemaking (*see* 64 FR 53582; October 4, 1999), the Commission revised § 50.59 to incorporate new thresholds for permitting changes to a plant as described in the final safety analysis report without NRC approval. For consistency and clarity, similar changes are now being proposed for 10 CFR part 52 applicants or licensees. Because of some differences in how the change control requirements are structured in the design certification rules, certain definitions contained in § 50.59 are not necessary for or applicable to 10 CFR part 52 and are not being included in this proposed rule. One definition that the Commission is including is the definition from the new § 50.59 for a ''departure from a method of evaluation,'' which is appropriate to include in this rulemaking so that the eighth criterion in Section VIII.B.5.b of the design certification rules will be implemented as intended.

B. 10 CFR Part 2, Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders

The proposed rule would amend §§ 2.110, 2.400, 2.401, 2.402, 2.403, 2.404, 2.406, 2.500, 2.501, and 2.502 to correct references to former 10 CFR part 52 appendices that have been redesignated as subparts.

C. 10 CFR Part 20, Standards for Protection Against Radiation

The proposed rule would amend § 20.1002 to clarify that the regulations in 10 CFR part 20 also apply to licenses issued under 10 CFR part 52. This conforming change was inadvertently overlooked when the Commission originally promulgated 10 CFR part 52.

D. 10 CFR Part 21, Reporting of Defects and Noncompliance

The proposed rule would amend §§ 21.2, 21.3, and 21.21 to clarify the applicability of 10 CFR part 21 to individuals, corporations, partnerships, or other entities doing business within the United States, and directors and responsible officers of such organizations, that hold a permit or license under 10 CFR part 52. These conforming changes would correct an oversight when the Commission first adopted 10 CFR part 52, to ensure that the requirements in 10 CFR part 21 apply to applicants for, and holders of licenses under 10 CFR part 52, as well as to suppliers of basic components to such licensees.

Combined Licenses, Manufacturing Licenses, Duplicate Design Licenses

The proposed rule would make 10 CFR part 21 applicable to applicants for, and holders of combined licenses, manufacturing licenses, and duplicate design licenses under 10 CFR part 52, and suppliers of basic components to such applicants and holders, by amending paragraphs (a), (b), and (c) of § 21.2 regarding the scope of 10 CFR part 21 and amending the definitions of basic component, commercial grade item, critical characteristics, dedicating entity, dedication, defect, and substantial safety hazard in § 21.3. In addition, the proposed rule would amend § 21.21 to clearly state when a director or responsible officer subject to 10 CFR part 21 must notify the Commission that the director or officer has information reasonably indicating a failure to comply or a defect affecting the construction or operation of a facility or an activity that is subject to the licensing requirements under 10 CFR part 52 or affecting a basic component supplied for a facility or an activity that is subject to the licensing requirements under 10 CFR part 52. The Commission notes that a supplier of safety-related analyses and services to a licensee under part 52 is subject to part 21, inasmuch as such services constitute ''basic components;'' this is no different than the applicability of part 21 to a supplier of such analyses and services to a licensee under part 50.

Early Site Permits

With respect to early site permits, the Commission proposes to use a different approach, such that the requirements of part 21 do not apply to applicants for early site permits, or holders of early site permits so long as the early site permit is not referenced in any license application. During the pendency of the early site permit application before the NRC, the applicant would be required by 10 CFR 50.9, ''Completeness and accuracy of information,'' to notify the Commission of any information having a ''significant implication for public health and safety or the common defense and security'' with respect to the matters covered in the application, pursuant to proposed § 52.111. Failure to abide by the completeness and accuracy requirements in § 50.9 would subject the applicant to potential criminal liability under § 52.113 (proposed § 52.403). In addition, under current § 52.9, the early site permit applicant would be subject to penalties for deliberate misconduct, including submission to the NRC of information known to be incomplete or inaccurate in some material aspect. Finally, during the pendency of an early site permit application, the application has no operative effect with respect to issue resolution under § 52.39; consequently, an early site permit application itself could not result in a ''substantial safety hazard'' by virtue of the application being referenced in a nuclear power plant licensing proceeding. Therefore, the Commission does not believe that adopting the regulatory overlay of part 21 during the pendency of an early site permit application is necessary to effectuate the Commission's regulatory

responsibilities under the AEA, as amended, including providing reasonable assurance of adequate protection of public health and safety or common defense and security.

The Commission does not believe that part 21 should apply to the early site permit holder after the early site permit has been issued, but before the holder has referenced the permit in a license application.[2] With one exception, the early site permit does not authorize any action by the holder with respect to the construction or operation of a nuclear power plant. The exception is when the early site permit authorizes the holder to conduct the site preparation activities permitted under 10 CFR 50.10(e)(1) (commonly referred to as limited work authorization–1, or LWA–1, activities). However, these activities are related to site clearing and preparation, and do not permit any construction (including subsurface preparation) for ''structures, systems and components which prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.'' Thus, the conduct of LWA–1 activities do not appear to have any reasonable possibility of resulting in a ''substantial safety hazard.'' Furthermore, the inherent nature of an early site permit is site-specific and not susceptible to generic or wide-ranging applicability. For these reasons, the Commission proposes that part 21 should not apply to an early site permit holder until the permit is referenced by a license applicant.

Once an early site permit holder references the permit in a license application, the Commission believes that the holder should be subject to part 21. The Commission's safety review of a license application referencing an early site permit is limited in accordance with §§ 52.39 and 52.79 (proposed § 52.211), under the precept that the site parameters, terms, and conditions which define the envelope for safe siting of a nuclear power plant have been determined by the NRC in the early site permit proceeding. If the early site permit holder discovers a significant safety concern with respect to its site (*e.g.*, that the specified site parameter for seismic acceleration is less than the projected acceleration due to new information), the concern should be reported to the NRC so that it may be considered in the review of the application referencing the early site permit. This reporting attains special importance given the Commission's proposal (see discussion in Section III.A.8 on referencing an early site permit) not to impose an updating requirement for early site permit information other than that related to emergency preparedness. Accordingly, the Commission concludes that the early site permit holder should be subject to part 21 once it references the permit in a license application.

The Commission believes that changes to part 21 are unnecessary to reflect these determinations with respect to early site permit applicants and holders. A licensee's reporting requirements in part 21 apply only with respect to ''basic components'' used or to be used in an NRC-licensed or otherwise regulated facility. The safety-related analyses and consulting services supplied to an applicant for an early site permit appear to fall within the definition of ''basic component,'' in that they constitute ''safety-related design [and] analyses * * * associated with component hardware'' (*See* 10 CFR 21.3, ''Basic component,'' paragraph (3)). Thus, part 21 could be interpreted as applying to the early site permit holder immediately upon the permit's issuance. However, there appears to be little reasonable likelihood of a ''substantial safety hazard'' unless and until the early site permit has been referenced by the permit holder in a license application. Once the early site permit has been referenced, the potential for a substantial safety hazard clearly exists if a known defect in site parameters, terms, or conditions defining the envelope for safe plant operation is not disclosed, and a plant is designed, constructed, and allowed to operate which does not reflect the actual limiting parameters and conditions of the site. Thus, no changes to part 21 are necessary to reflect the Commission's intent.

The Commission also proposes that part 21 apply to suppliers of safety-related analyses and services to an early site permit holder in the same manner and extent as part 21 applies to the early site permit holder. Such suppliers would be subject to part 21 only after the early site permit holder references the permit in a license application.

Design Certification Rules

Similar to the approach for early site permit applicants and holders, the Commission proposes that the requirements in part 21 should not apply to the applicant/vendor for a design certification (and/or its successors) during the pendency of its design certification application. During the pendency of the design certification application, the applicant/vendor would be required by 10 CFR 50.9, ''Completeness and accuracy of information,'' to notify the Commission of any information having a ''significant implication for public health and safety or the common defense and security'' with respect to the matters covered in the application, pursuant to proposed § 52.111. Failure to abide by the completeness and accuracy requirements in § 50.9 would subject the applicant/vendor to potential criminal liability under § 52.113 (proposed § 52.403). In addition, under current § 52.9, the applicant for a design certification is subject to penalties for deliberate misconduct, including submission to the NRC of information known to be incomplete or inaccurate in some material aspect. Finally, during the pendency of a design certification application, the application has no operative effect with respect to issue resolution under current § 52.63 (proposed § 52.127); consequently, a design certification application itself could not result in a ''substantial safety hazard'' by virtue of the application being referenced in a nuclear power plant licensing proceeding. Therefore, the Commission does not believe that adopting the regulatory overlay of part 21 during the pendency of a design certification application is necessary to effectuate the Commission's regulatory responsibilities under the AEA, as amended, including providing reasonable assurance of adequate protection to public health and safety or common defense and security.

The Commission also believes that the reporting requirements in part 21 should not apply to the design certification applicant/vendor after the Commission issuance of a final design certification rule but before the design certification rule is referenced by at least one applicant/licensee (nor should either §§ 52.9 or 52.111 be modified to make them applicable to the design certification applicant/vendor). The Commission does not believe that a design certification rule would reasonably result in a ''substantial safety hazard'' so long as the design certification rule is not actually referenced in a license application (and

[2] The Commission would not permit a license applicant to reference an early site permit which it does not hold (or has rights to the permit contingent upon a NRC decision to issue a license whose application references the early site permit). To otherwise permit referencing of an early site permit by a non-holder would destroy the commercial value of the permit, and would prevent any entity from seeking an early site permit. This would frustrate the Commission's regulatory objective of providing early regulatory approval of siting, emergency preparedness, and environmental matters. Since the early site permit is a license, the relevant requirements of part 21 are those applicable to a licensee.

thereafter incorporated by reference into a license). It is true that, unlike an early site permit, a design certification rule is of general applicability and that a complete nuclear power plant design could be provided by an entity other than the original design certification applicant/vendor (*see* § 52.73 (proposed § 52.203)). Nonetheless, unless the other entity provides a design which is subsequently referenced in an NRC license application, there is no ''substantial safety hazard'' created (although the Commission acknowledges that the entity may incur significant redesign costs if the entity completes substantial parts of the design before submission of the application, only to find upon submission of the application that there were significant defects in the certified design). Upon weighing of all relevant factors, the Commission proposes that part 21 should not apply to the design certification applicant/vendor until a final, Commission-approved design certification rule is referenced by at least one applicant/licensee.

However, the Commission believes that once a design certification rule is referenced by an applicant, the design certification applicant/vendor should be subject to part 21. The Commission's safety review of a license application referencing a design certification rule is limited in accordance with § 52.63 (proposed § 52.127) and § 52.79 (proposed § 52.211). If the design certification applicant/vendor has discovered a significant safety concern with respect to its certified design, it should be reported to the NRC so that it may be considered in the review of the application referencing the design certification rule. While this places a continuing obligation on the design certification applicant/vendor to monitor whether its design has been referenced in a license application, as a practical matter it is likely that the license applicant will have contractually engaged the design certification applicant/vendor prior to submitting the application. In any event, the Commission concludes that the design certification applicant/vendor should be subject to part 21 after its design certification has been referenced by an applicant for a license.

The Commission believes that, with one exception, changes to part 21 are unnecessary to reflect these determinations with respect to design certification applicants/vendors. Designs submitted for certification are ''basic components,'' as defined in § 21.3, as are any supporting analyses inasmuch as they constitute ''safety-related design [and] analysis * * * associated with component hardware whether these services are performed by the component supplier or not.'' If the design certification applicant/vendor provides the certified design to a license applicant pursuant to contract or agreement, the design certification applicant/vendor ''supplies'' the basic component, *see* § 21.3. However, there is a possibility that an entity other than the applicant/vendor of a design which was certified in a design certification rule may supply the complete plant design to a referencing license applicant. *See* § 52.73 (proposed § 52.203). For these reasons, the Commission is considering a change to the definition of ''supplying or supplies'' in § 21.3 to ensure that a design certification applicant/vendor who does not pursuant to contract supply to a license applicant the complete design for the design certification, is also subject to part 21 for this special situation.

For the reasons discussed earlier, the Commission believes that it is reasonable and appropriate to limit the applicability of part 21 such that it is applicable once the design certification rule has been referenced by an applicant, permit holder, or licensee. Therefore, although the potential ambit of part 21 extends to an applicant/vendor of a design certification after issuance of a design certification rule, the Commission has decided not to extend the applicability of part 21 in such a fashion. By contrast, once the design certification rule has been referenced, the potential for a substantial safety hazard exists if a known defect in a design certification rule is not disclosed, the remainder of the plant is designed, the plant constructed, and subsequently allowed to operate. Accordingly, the Commission concludes that part 21 should apply to the design certification applicant/vendor after the design certification rule has been referenced by a license applicant. Finally, the Commission concludes that part 21 should apply to suppliers of safety-related analyses and services to a design certification applicant/vendor in the same manner and extent as part 21 applies to the design certification applicant.

E. 10 CFR Part 50, Domestic Licensing of Production and Utilization Facilities

The proposed rule would amend paragraph (a)(1) of § 50.109 (backfit rule) to clearly state the applicability of the backfit rule to some of the licensing processes 10 CFR part 52 and the date that backfit protection commences for those licensing processes. The licensing processes to which the backfitting provisions in § 50.109 apply are standard design approvals, combined licenses, manufacturing licenses, and duplication design licenses issued under subparts E, G, H, and I of 10 CFR part 52, respectively. The backfitting requirement in § 50.109 does not apply to early site permits, early site reviews, and standard design certifications issued under subparts A, B, and D, respectively, in as much as these licensing processes have their own special backfitting provisions (the special backfit requirements set forth in § 52.39, current sections 5 and 6 of Appendix Q (proposed § 52.47), and current § 52.63(a) (proposed § 52.127(a)) apply to early site permits, early site reviews, and standard design certifications, respectively). Section 50.109(a)(1)(vii) sets forth the applicability of these special backfitting provisions for a combined license that references an early site permit, early site review, or design certification rule.

The proposed rule would also remove appendices M, N, O, and Q from 10 CFR part 50. These appendices were transferred to 10 CFR part 52 when it was first promulgated (54 FR 15372; April 18, 1989). However, the Commission failed to remove those appendices from 10 CFR part 50, though the Commission intended to do so (*see* 54 FR 15385; April 18, 1989).

F. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions

The proposed rule would amend paragraph (b)(6) of § 51.20, ''Criteria for and identification of licensing and regulatory actions requiring environmental impact statements,'' to make clear that issuance of a manufacturing license requires preparation of an environmental impact statement or a supplement to an environmental impact statement. Paragraph (b), which defines types of actions that require an environmental impact statement or a supplement to an environmental impact statement would replace the current reference to Appendix M with a reference to subpart H of 10 CFR part 52 which is the proposed subpart that sets forth the process for manufacturing licenses, formerly contained in Appendix M.

G. 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste

The proposed rule would amend § 72.210 to indicate that a general license would be issued for the storage

of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under a combined license or duplicate design license under 10 CFR part 52. The proposed rule would also amend the requirements in § 72.218(b) regarding an application for termination of a reactor operating license and the removal of the spent fuel stored at the reactor site to indicate that this provision also applies to applications for termination of a combined license or duplicate design license.

H. 10 CFR Part 73, Physical Protection of Plants and Materials

The proposed rule would amend § 73.1(b) to clarify that the regulations in 10 CFR part 73 also apply to licenses issued under 10 CFR part 52.

I. 10 CFR Part 140, Financial Protection Requirements and Indemnity Agreements

The proposed rule would amend §§ 140.2, 140.10, 140.11, and 140.13 to correct the language to note that holders of combined licenses issued under 10 CFR part 52 are required to conform with the Commission's financial protection requirements implementing the Price-Anderson Act (Section 170 of the Atomic Energy Act of 1954). The proposed rule would also add new §§ 140.11(c) and 140.13(b). Section 140.11(c) would specify that a holder of a combined license must have and maintain financial protection when the Commission authorizes operation under § 52.231(g). Section 140.13(b) would require that each holder of a combined license who is also the holder of a license under 10 CFR part 70 authorizing ownership, possession, and storage only of special nuclear material at the site of the nuclear reactor have and maintain financial protection in the amount of $1,000,000. Proof of financial protection would be required to be filed with the Commission in the manner specified prior to issuance of the license under 10 CFR part 70.

J. 10 CFR Part 170, Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The proposed rule would amend § 170.2 to clarify the applicability of the regulations in 10 CFR part 170 to the licensing processes in 10 CFR parts 50 and 52.

IV. Specific Requests for Comments

In addition to the general invitation to submit comments on the proposed rule, the Commission also requests comments on the following questions:

1. Should the final rule include an updating requirement for other than emergency preparedness information and what portions of the early site permit (ESP) should be subject to the updating requirement? Also, if an updating requirement is adopted, in what manner could an interested person challenge the updated information? (refer to § 52.39(a))

2. Should the final rule include revisions to 10 CFR part 52 to: (1) Distinguish between site characteristics, site parameters, design characteristics, and design parameters; (2) require the Commission to specify the site characteristics and design parameters when issuing early site permits; (3) require the design certification rule to specify the site parameters and design characteristics for the design; (4) require a combined license applicant referencing an early site permit to demonstrate that either the design of the nuclear power plant or the site parameters and design characteristics of a referenced design certification rule fall within the design parameters and site characteristics of the early site permit; and (5) require a combined license applicant referencing a design certification rule to demonstrate that the site parameters and design characteristics of the design certification rule fall within either: (i) The site characteristics of a site, or (ii) the site characteristics and design parameters of a referenced early site permit?

Currently, 10 CFR art 52 uses the various terms, ''site parameters,'' ''postulated site parameters,'' ''site characteristics,'' ''physical characteristics,'' and ''the parameters specified in the early site permit'' *See, e.g.,* §§ 52.17, 52.18, 52.21, 52.47 (proposed § 52.107), § 52.79 (proposed § 52.211). In some cases, it appears that different terms are used to apply to the same concept, *e.g.*, ''site parameters,'' and ''postulated site parameters.'' In other cases, information which would appear to constitute ''site parameters'' as used in the current rule is not characterized as such, *e.g.* § 52.17(a)(1)(i) through (viii).

To address these inconsistencies, the Commission is considering amending 10 CFR part 52, including proposed subparts A, D, and G, to use the terms: ''site characteristics,'' ''site parameters,'' ''design characteristics,'' and ''design parameters,'' to set forth in clear and unambiguous terms the Commission's requirements on early site permits, design certifications, and combined licenses. ''site characteristics'' would be the actual physical and demographic values for the site, *e.g.*, the ground force acceleration of a defined earthquake, flood level, or the atmospheric dispersion value. The ''design parameters'' for an early site permit would include the postulated values for thermal power level, radiological effluents, and type of cooling system for the facility. ''Design characteristics'' for a design certification would be the actual values for the design, *e.g.*, thermal power level or building height. ''Site parameters'' for a design certification would include the postulated values for floods, ground force acceleration of a postulated earthquake, and tornado wind speeds.

3. Are there terms and conditions for an ESP that can only be fulfilled after issuance of the referencing combined license, such that ''have been met'' should be changed to ''will be met,'' or ''have been and will be met''? (refer to proposed § 52.211(a)(1))

4. Should the final rule include a requirement in § 50.34(a) for a construction permit application that references an ESP to demonstrate that the design of the facility falls within the site parameters of the ESP? (refer to proposed § 52.211(a)(1))

5. Should the final rule include a requirement in 10 CFR part 50 to perform testing to qualify advanced reactor designs before licensing? The purpose of this testing requirement would be to demonstrate that new or innovative safety features will perform as predicted in an applicant's safety analysis report, that effects of systems interactions have been found acceptable, and to provide sufficient data for analytical code validation, as required by proposed §§ 52.107(b) and 52.211(b).

6. Should the final rule include a revision to the current § 52.63 (proposed § 52.127) to allow the original design certification applicant to petition the Commission for rulemaking to amend the design certification rule to incorporate ''beneficial changes,'' including improvements in safety, and/or design changes that would ''significantly improve efficiency, reliability and economics.'' Refer to letters from Steven A. Hucik, GE Nuclear Energy (March 30, 2002) and Ronald L. Simard, Nuclear Energy Institute (March 22, 2002).

7. Should 10 CFR part 21 apply to: (a) A holder of an early site permit, but only after the holder references the permit in a license application, and (b) an applicant/vendor of a design which is the subject of a design certification rule, but only after the design certification rule is first referenced in a license application. In both cases, the

Commission believes that there is no reasonable possibility of a ''substantial safety hazard'' until either the early site permit or design certification rule is referenced. The Commission seeks public comment on the Commission's proposed basis for this proposal, and whether there are other factors and policy considerations, either in support of, or in opposition to, the Commission's proposal.

V. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Website (Web). The NRC's interactive rulemaking Website is located at *http://ruleforum.llnl.gov*. These documents may be viewed and downloaded electronically via this Website.

NRC's Public Electronic Reading Room (PERR). The NRC's public electronic reading room is located at *www.nrc.gov/reading-rm.html*.

Document	PDR	Web	PERR
Comments on the draft rule language:			
General Electric	X	X	ML013180207
Entergy	X	X	ML013200006
Nuclear Energy Institute	X	X	ML013200158
Westinghouse	X	X	ML013200173
Exelon	X	X	ML020040187
Regulatory History of Design Certification [3]	X	.....	ML003761550

VI. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, the NRC made editorial changes to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC is revising the procedural requirements for early site permits, standard design certifications, and combined licenses for nuclear power plants to make certain corrections and changes based on the experience of the previous design certification reviews and on discussions with stakeholders on these licensing processes. In addition, this proposed rule would amend certain portions of the three design certification rules in 10 CFR part 52, appendices A, B, and C (for U.S. ABWR, System 80+, and AP600 designs, respectively) Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. For these reasons, the Commission concludes that this action does not constitute the establishment of a standard that contains generally applicable requirements.

VIII. Environmental Impact: Categorical Exclusion

The NRC has determined that the changes made in this proposed rule fall within the types of action described in categorical exclusions 10 CFR 51.22(c)(1), (c)(2), and (c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.[4]

IX. Paperwork Reduction Act Statement

This proposed rule amends information collection requirements contained in 10 CFR Part 52 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). These information collection requirements have been submitted to the Office of Management and Budget for review and approval. The proposed changes to 10 CFR parts 2, 20, 21, 50, 51, 72, 73, 140, and 170 do not contain new or amended information collection requirements. Existing requirements were approved by the Office of Management and Budget, approval number(s) 3150–0014, 3150–0035, 3150–0011, 3150–0021, 3150–0132, 3150–0039, and 3150–0002.

The burden to the public for the information collections in 10 CFR part 52 is estimated to average 3,429 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

[3] The regulatory history of the NRC's design certification reviews is a package of 100 documents that is available in NRC's PERR and in the PDR. This history spans a 15-year period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs.

[4] When 10 CFR part 52 was promulgated in 1989, the NRC determined that the regulation met the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(3). As stated in the **Federal Register** notice for the final rule (54 FR 15384, April 18, 1989), ''It makes no substantive difference for the purpose of the categorical exclusion that the amendments are in a new 10 CFR part 52 rather than in 10 CFR part 50. The amendments are, in fact, amendments to the 10 CFR part 50 procedures and could have been placed in that part.'' The categorical exclusion for the current proposed change to 10 CFR part 52 is consistent with the original categorical exclusion determination.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151, 3150–0011, and 3150–0039), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by August 4, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The Commission has prepared the following draft regulatory analysis on the substantive changes in this proposed regulation that could impose regulatory burdens. The majority of the changes in this proposed rule involve formatting, reorganization, or process changes that do not affect regulatory burden. These types of changes are not addressed in this regulatory analysis, as they would not affect the burden on future applicants.

The proposed rule contains two amendments that appear to impose regulatory burdens on future applicants for construction permits, combined licenses, and duplicate design licenses who may file an application referencing an early site permit or a certified design. There are no current applicants who would be burdened by the proposed amendments.

The first of these changes requires applicants who reference an early site permit to update and correct emergency planning information and discuss whether the new information materially alters the bases for compliance with the applicable requirements. The second change requires applicants who reference a certified design to include a plant-specific probabilistic risk assessment (PRA) that uses the design-specific PRA and is updated to account for site-specific design information and any design changes.

The Commission believes that, practically speaking, there would be no change in the burden on future applicants resulting from these amendments. This is because the information required by the proposed rule would, in all likelihood, be requested by the NRC staff during the review of the application if these requirements were not adopted. The staff could not perform an adequate review of an application referencing an early site permit without reviewing the most up-to-date emergency planning information. Therefore, if this updated information was not required in the application, the staff would be compelled to request the information from the applicant in order to make a finding that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

Likewise, if the Commission did not require an updated PRA in an application for a combined license referencing a certified design, the staff would be compelled to request the information from the applicant. The Commission would need this information in order to assist it in finding that the applicable requirements of 10 CFR part 50 have been met, and in reviewing the licensee's proposed inspections, tests, and analyses that the licensee must perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Atomic Energy Act, and the Commission's rules and regulations.

For these reasons, the Commission believes it is prudent to proceed with this proposed rulemaking. The addition of these requirements for applicants for construction permits, combined licenses, and duplicate design licenses is necessary to ensure the NRC staff can meet its regulatory obligations. In addition, giving future applicants notification up front that the staff requires this information in the application will relieve them of a larger burden of having to compile the information during the application review process when the Commission requests the information to complete its review. The need to compile the information during the review process could impact the review schedule and result in other unnecessary burdens on the applicant.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing of nuclear power plants. The companies that will apply for an approval, certification, permit, site report, or license in accordance with the regulations affected by this proposed rule do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XII. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109. The proposed rule would revise the requirements for early site permits, standard design certifications, and combined licenses for nuclear power plants, so it would affect a potential applicant who might, in the future, apply for an early site permit, design certification, or combined license. However, the backfit rule does not apply because the proposed rule would not impose any modifications on a current holder of an early site permit, certified design, or combined license.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and record keeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection,

Reporting and record keeping requirements.

10 CFR Part 50

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

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and record keeping requirements, Standard design, Standard design certification.

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and record keeping requirements, Security measures, Spent fuel, Whistle blowing.

10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements, Security measures.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 2, 20, 21, 50, 51, 52, 72, 73, 140, and 170.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.110, paragraph (a) is revised to read as follows:

§ 2.110 Filing and administrative action on submittals for design review or early review of site suitability issues.

(a)(1) A submittal under subpart E of part 52 of this chapter must be subject to §§ 2.101(a) and 2.790 to the same extent as if it were an application for a permit or license.

(2) Except as specifically provided otherwise by the provisions of subpart B to part 52 of this chapter, a submittal under subpart B must be subject to § 2.101(a) (2) through (4) to the same extent as if it were an application for a permit or license.

* * * * *

3. Section 2.400 is revised to read as follows:

§ 2.400 Scope of subpart.

This subpart describes procedures applicable to licensing proceedings that involve the consideration in hearings of a number of applications, filed by one or more applicants pursuant to subpart I of part 52 of this chapter, for licenses to construct and operate nuclear power reactors of essentially the same design to be located at different sites.

4. Section 2.401 is revised to read as follows:

§ 2.401 Notice of hearing on applications under Subpart I of Part 52 for construction permits.

(a) In the case of applications under subpart I of part 52 of this chapter for construction permits for nuclear power reactors of the type described in § 50.22 of this chapter, the Secretary will issue notices of hearing under § 2.104.

(b) The notice of hearing will also state the time and place of the hearings on any separate phase of the proceeding.

5. In § 2.402, paragraph (a) is revised to read as follows:

§ 2.402 Separate hearings on separate issues; consolidation of proceedings.

(a) In the case of applications under subpart I of part 52 of this chapter for construction permits for nuclear power reactors of a type described in § 50.22 of this chapter, the Commission or the presiding officer may order separate hearings on particular phases of the proceeding, such as matters related to the acceptability of the design of the reactor, in the context of the site parameters postulated for the design; environmental matters; or antitrust aspects of the application.

* * * * *

6. Section 2.403 is revised to read as follows:

§ 2.403 Notice of proposed action on applications for operating licenses under Subpart I of Part 52.

In the case of applications under subpart I of part 52 of this chapter for operating licenses for nuclear power reactors, if the Commission has not found that a hearing is in the public interest, the Director of Nuclear Reactor Regulation will, prior to acting thereon, cause to be published in the **Federal Register**, under § 2.105, a notice of proposed action with respect to each

application as soon as practicable after the applications have been docketed.

7. Section 2.404 is revised to read as follows:

§ 2.404 Hearings on applications for operating licenses under Subpart I of Part 52.

If a request for a hearing and/or petition for leave to intervene is filed within the time prescribed in the notice of proposed action on an application for an operating license under subpart I of part 52 of this chapter with respect to a specific reactor(s) at a specific site and the Commission or an atomic safety and licensing board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel has issued a notice of hearing or other appropriate order, the Commission or the atomic safety and licensing board may order separate hearings on particular phases of the proceeding and/or consolidate for hearing two or more proceedings in the manner described in § 2.402.

8. Section 2.406 is revised to read as follows:

§ 2.406 Finality of decisions on separate issues.

Notwithstanding any other provision of this chapter, in a proceeding conducted under this subpart and subpart I of part 52 of this chapter, no matter which has been reserved for consideration in one phase of the hearing shall be considered at another phase of the hearing except on the basis of significant new information that substantially affects the conclusion(s) reached at the other phase or other good cause.

9. Section 2.500 is revised to read as follows:

§ 2.500 Scope of subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve the consideration in separate hearings of an application for a license to manufacture nuclear power reactors under subpart H of part 52 of this chapter, and applications for construction permits and operating licenses for nuclear power reactors which have been the subject of such an application for a license to manufacture such facilities (manufacturing license).

10. In § 2.501, paragraphs (a), (b)(1)(vii) and (b)(3) are revised to read as follows:

§ 2.501 Notice of hearing on application under Subpart H of Part 52 for a license to manufacture nuclear power reactors.

(a) In the case of an application under subpart H of part 52 of this chapter for a license to manufacture nuclear power reactors of the type described in § 50.22 of this chapter to be operated at sites not identified in the license application, the Secretary shall issue a notice of hearing to be published in the **Federal Register** at least thirty (30) days prior to the date set for hearing in the notice. The notice must be issued as soon as practicable after the application has been docketed. The notice will state:

(1) The time, place, and nature of the hearing and/or the prehearing conference;

(2) The authority within which the hearing is to be held;

(3) The matters of fact and law to be considered; and

(4) The time within which answers to the notice shall be filed.

(b) * * *

(1) * * *

(vii) Whether, in accordance with the requirements of subpart A of part 51 and subpart H of part 52 of this chapter, the license should be issued as proposed.

* * * * *

(3) That, regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 and § 52.245(b) of this chapter,

* * * * *

11. Section 2.502 is revised to read as follows:

§ 2.502 Notice of hearing on application for a permit to construct a nuclear power reactor manufactured under a Commission license issued under subpart H of part 52 of this chapter at the site at which the reactor is to be operated.

The issues stated for consideration in the notice of hearing on an application for a permit to construct a nuclear power reactor(s) which is the subject of an application for a manufacturing license under subpart H of part 52 of this chapter, will be those stated in § 2.104(b) and, in addition, whether the site on which the facility is to be operated falls within the postulated site parameters specified in the relevant application for a manufacturing license.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

12. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

13. Section 20.1002 is revised to read as follows:

§ 20.1002 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, transfer, or dispose of byproduct, source, or special nuclear material or to operate a production or utilization facility under parts 30 through 36, 39, 40, 50, 52, 60, 61, 70, or 72 of this chapter, and in accordance with 10 CFR 76.60 to persons required to obtain a certificate of compliance or an approved compliance plan under part 76 of this chapter. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released in accordance with 10 CFR 35.75, or to exposure from voluntary participation in medical research programs.

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

14. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

15. In § 21.2, paragraphs (a), (b), and (c) are revised to read as follows:

§ 21.2 Scope.

(a) The regulations in this part apply, except as specifically provided otherwise in Parts 31, 34, 35, 39, 40, 60, 61, 63, 70, or Part 72 of this chapter, to:

(1) Each individual, partnership, corporation, or other entity licensed pursuant to the regulations in this chapter to possess, use, or transfer within the United States source material, byproduct material, special nuclear material, and/or spent fuel and high-level radioactive waste, or to construct, manufacture, possess, own, operate, or transfer within the United States, any production or utilization facility or independent spent fuel storage installation (ISFSI) or monitored retrievable storage installation (MRS); and each director and responsible officer of such a licensee; and

(2) Each individual, corporation, partnership, or other entity doing business within the United States, and each director and responsible officer of such organization, that holds a permit or license under part 52 of this chapter or constructs a production or utilization

facility licensed for the manufacture, construction, or operation pursuant to part 50 or part 52 of this chapter, an ISFSI for the storage of spent fuel licensed pursuant to part 72 of this chapter, an MRS for the storage of spent fuel or high-level radioactive waste pursuant to part 72 of this chapter, or a geologic repository for the disposal of high-level radioactive waste under part 60 or 63 of this chapter; or supplies basic components for a facility or activity licensed, other than for export, under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or part 72 of this chapter.

(b) For persons licensed to construct a facility under either a construction permit issued under § 50.23 of this chapter or a combined license issued under § 52.227 of this chapter, or approved to hold a permit for a site or sites for one or more nuclear power facilities under § 52.24 of this chapter, evaluation of potential defects and failures to comply and reporting of defects and failures to comply under § 50.55(e) of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects and failures to comply under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under section 206 of the Energy Reorganization Act of 1974.

(c) For persons licensed to operate a nuclear power plant under part 50 or part 52 of this chapter, evaluation of potential defects and appropriate reporting of defects under §§ 50.72, 50.73 or § 73.71 of this chapter satisfies each person's evaluation, notification, and reporting obligation to report defects under this part and the responsibility of individual directors and responsible officers of such licensees to report defects under section 206 of the Energy Reorganization Act of 1974.

* * * * *

16. Section 21.3 is revised to read as follows:

§ 21.3 Definitions.

As used in this part:

Basic component. (1)(i) When applied to nuclear power plants licensed pursuant to 10 CFR part 50 or part 52 of this chapter, basic component means a structure, system, or component, or part thereof that affects its safety function necessary to assure:

(A) The integrity of the reactor coolant pressure boundary;

(B) The capability to shut down the reactor and maintain it in a safe shutdown condition; or

(C) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

(ii) Basic components are items designed and manufactured under a quality assurance program complying with 10 CFR part 50, appendix B, or commercial grade items which have successfully completed the dedication process.

(2) When applied to other facilities and when applied to other activities licensed pursuant to 10 CFR parts 30, 40, 50 (other than nuclear power plants), 60, 61, 63, 70, 71, or 72 of this chapter, basic component means a structure, system, or component, or part thereof that affects their safety function, that is directly procured by the licensee of a facility or activity subject to the regulations in this part and in which a defect or failure to comply with any applicable regulation in this chapter, order, or license issued by the Commission could create a substantial safety hazard.

(3) In all cases, basic component includes safety-related design, analysis, inspection, testing, fabrication, replacement of parts, or consulting services that are associated with the component hardware whether these services are performed by the component supplier or others.

Commercial grade item. (1) When applied to nuclear power plants licensed pursuant to 10 CFR part 50 or part 52, commercial grade item means a structure, system, or component, or part thereof that affects its safety function, that was not designed and manufactured as a basic component. Commercial grade items do not include items where the design and manufacturing process require in-process inspections and verifications to ensure that defects or failures to comply are identified and corrected (i.e., one or more critical characteristics of the item cannot be verified).

(2) When applied to facilities and activities licensed pursuant to 10 CFR parts 30, 40, 50 (other than nuclear power plants), 60, 61, 63, 70, 71, or 72, commercial grade item means an item that is:

(i) Not subject to design or specification requirements that are unique to those facilities or activities;

(ii) Used in applications other than those facilities or activities; and

(iii) To be ordered from the manufacturer/supplier on the basis of specifications set forth in the manufacturer's published product description (for example, a catalog).

Commission means the Nuclear Regulatory Commission or its duly authorized representatives.

Constructing or *construction* means the analysis, design, manufacture, fabrication, placement, erection, installation, modification, inspection, or testing of a facility or activity which is subject to the regulations in this part and consulting services related to the facility or activity that are safety related.

Critical characteristics. When applied to nuclear power plants licensed pursuant to 10 CFR part 50 or part 52, critical characteristics are those important design, material, and performance characteristics of a commercial grade item that, once verified, will provide reasonable assurance that the item will perform its intended safety function.

Dedicating entity. When applied to nuclear power plants licensed pursuant to 10 CFR part 50 or part 52, dedicating entity means the organization that performs the dedication process. Dedication may be performed by the manufacturer of the item, a third-party dedicating entity, or the licensee. The dedicating entity, pursuant to § 21.21(c) of this part, is responsible for identifying and evaluating deviations, reporting defects and failures to comply for the dedicated item, and maintaining auditable records of the dedication process.

Dedication. (1) When applied to nuclear power plants licensed pursuant to 10 CFR part 50 or part 52, dedication is an acceptance process undertaken to provide reasonable assurance that a commercial grade item to be used as a basic component will perform its intended safety function and, in this respect, is deemed equivalent to an item designed and manufactured under a 10 CFR part 50, appendix B, quality assurance program. This assurance is achieved by identifying the critical characteristics of the item and verifying their acceptability by inspections, tests, or analyses performed by the purchaser or third-party dedicating entity after delivery, supplemented as necessary by one or more of the following: commercial grade surveys; product inspections or witness at holdpoints at the manufacturer's facility, and analysis of historical records for acceptable performance. In all cases, the dedication process must be conducted in accordance with the applicable provisions of 10 CFR part 50, appendix B. The process is considered complete when the item is designated for use as a basic component.

(2) When applied to facilities and activities licensed pursuant to 10 CFR parts 30, 40, 50 (other than nuclear

power plants), 60, 61, 63, 70, 71, or 72, dedication occurs after receipt when that item is designated for use as a basic component.

Defect means: (1) A deviation in a basic component delivered to a purchaser for use in a facility or an activity subject to the regulations in this part if, on the basis of an evaluation, the deviation could create a substantial safety hazard; or

(2) The installation, use, or operation of a basic component containing a defect as defined in this section; or

(3) A deviation in a portion of a facility subject to the construction permit or manufacturing licensing requirements of part 50 or part 52 of this chapter provided the deviation could, on the basis of an evaluation, create a substantial safety hazard and the portion of the facility containing the deviation has been offered to the purchaser for acceptance; or

(4) A condition or circumstance involving a basic component that could contribute to the exceeding of a safety limit, as defined in the technical specifications of a license for operation issued pursuant to part 50 or part 52 of this chapter.

Deviation means a departure from the technical requirements included in a procurement document.

Director means an individual, appointed or elected according to law, who is authorized to manage and direct the affairs of a corporation, partnership or other entity. In the case of an individual proprietorship, director means the individual.

Discovery means the completion of the documentation first identifying the existence of a deviation or failure to comply potentially associated with a substantial safety hazard within the evaluation procedures discussed in § 21.21(a).

Evaluation means the process of determining whether a particular deviation could create a substantial hazard or determining whether a failure to comply is associated with a substantial safety hazard.

Notification means the telephonic communication to the NRC Operations Center or written transmittal of information to the NRC Document Control Desk.

Operating or *operation* means the operation of a facility or the conduct of a licensed activity which is subject to the regulations in this part and consulting services related to operations that are safety related.

Procurement document means a contract that defines the requirements which facilities or basic components must meet in order to be considered acceptable by the purchaser.

Responsible officer means the president, vice-president or other individual in the organization of a corporation, partnership, or other entity who is vested with executive authority over activities subject to this part.

Substantial safety hazard means a loss of safety function to the extent that there is a major reduction in the degree of protection provided to public health and safety for any facility or activity licensed, other than for export, pursuant to parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter.

Supplying or *supplies* means contractually responsible for a basic component used or to be used in a facility or activity which is subject to the regulations in this part.

17. Section 21.21 is revised to read as follows:

§ 21.21 Notification of failure to comply or existence of a defect and its evaluation.

(a) Each individual, corporation, partnership, dedicating entity, or other entity subject to the regulations in this part shall adopt appropriate procedures to—

(1) Evaluate deviations and failures to comply to identify defects and failures to comply associated with substantial safety hazards as soon as practicable, and, except as provided in paragraph (a)(2) of this section, in all cases within 60 days of discovery, in order to identify a reportable defect or failure to comply that could create a substantial safety hazard, were it to remain uncorrected, and

(2) Ensure that if an evaluation of an identified deviation or failure to comply potentially associated with a substantial safety hazard cannot be completed within 60 days from discovery of the deviation or failure to comply, an interim report is prepared and submitted to the Commission through a director or responsible officer or designated person as discussed in § 21.21(d)(5). The interim report should describe the deviation or failure to comply that is being evaluated and should also state when the evaluation will be completed. This interim report must be submitted in writing within 60 days of discovery of the deviation or failure to comply.

(3) Ensure that a director or responsible officer subject to the regulations of this part is informed as soon as practicable, and, in all cases, within the 5 working days after completion of the evaluation described in § 21.21(a)(1) if the construction or operation of a facility or activity, or a basic component supplied for such facility or activity—

(i) Fails to comply with the Atomic Energy Act of 1954, as amended, or any applicable rule, regulation, order, or license of the Commission relating to a substantial safety hazard, or

(ii) Contains a defect.

(b) If the deviation or failure to comply is discovered by a supplier of basic components, or services associated with basic components, and the supplier determines that it does not have the capability to perform the evaluation to determine if a defect exists, then the supplier must inform the purchasers or affected licensees within five working days of this determination so that the purchasers or affected licensees may evaluate the deviation or failure to comply, pursuant to § 21.21(a).

(c) A dedicating entity is responsible for—

(1) Identifying and evaluating deviations and reporting defects and failures to comply associated with substantial safety hazards for dedicated items; and

(2) Maintaining auditable records for the dedication process.

(d)(1) A director or responsible officer subject to the regulations of this part or a person designated under § 21.21(d)(5) must notify the Commission when he or she obtains information reasonably indicating a failure to comply or a defect affecting—

(i) The construction or operation of a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter and that is within his or her organization's responsibility; or

(ii) A basic component that is within his or her organization's responsibility and is supplied for a facility or an activity within the United States that is subject to the licensing requirements under parts 30, 40, 50, 52, 60, 61, 63, 70, 71, or 72 of this chapter.

(2) The notification to NRC of a failure to comply or of a defect under paragraph (d)(1) of this section and the evaluation of a failure to comply or a deviation under paragraph (a)(1) of this section, are not required if the director or responsible officer has actual knowledge that the Commission has been notified in writing of the defect or the failure to comply.

(3) Notification required by paragraph (d)(1) of this section must be made as follows—

(i) Initial notification by facsimile, which is the preferred method of notification, to the NRC Operations Center at (301) 816–5151 or by

telephone at (301) 816–5100 within two days following receipt of information by the director or responsible corporate officer under paragraph (a)(3) of this section, on the identification of a defect or a failure to comply. Verification that the facsimile has been received should be made by calling the NRC Operations Center. This paragraph does not apply to interim reports described in § 21.21(a)(2).

(ii) Written notification to the NRC at the address specified in § 21.5 within 30 days following receipt of information by the director or responsible corporate officer under paragraph (a)(3) of this section, on the identification of a defect or a failure to comply.

(4) The written report required by this paragraph must include, but need not be limited to, the following information, to the extent known:

(i) Name and address of the individual or individuals informing the Commission.

(ii) Identification of the facility, the activity, or the basic component supplied for such facility or such activity within the United States which fails to comply or contains a defect.

(iii) Identification of the firm constructing the facility or supplying the basic component which fails to comply or contains a defect.

(iv) Nature of the defect or failure to comply and the safety hazard which is created or could be created by such defect or failure to comply.

(v) The date on which the information of such defect or failure to comply was obtained.

(vi) In the case of a basic component which contains a defect or fails to comply, the number and location of all such components in use at, supplied for, or being supplied for one or more facilities or activities subject to the regulations in this part.

(vii) The corrective action which has been, is being, or will be taken; the name of the individual or organization responsible for the action; and the length of time that has been or will be taken to complete the action.

(viii) Any advice related to the defect or failure to comply about the facility, activity, or basic component that has been, is being, or will be given to purchasers or licensees.

(5) The director or responsible officer may authorize an individual to provide the notification required by this paragraph, provided that, this shall not relieve the director or responsible officer of his or her responsibility under this paragraph.

(e) Individuals subject to this part may be required by the Commission to supply additional information related to a defect or failure to comply. Commission action to obtain additional information may be based on reports of defects from other reporting entities.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

18. The authority citation for part 50 continues to read as follows:

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

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

19. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and appendices A, B, E, G, H, I, J, K, R, and S to this part.

* * * * *

20. In § 50.109, paragraph (a)(1) is revised to read as follows:

§ 50.109 Backfitting.

(a)(1) Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after:

(i) The date of issuance of the construction permit for the facility for facilities having construction permits issued after October 21, 1985; or

(ii) Six months before the date of docketing of the operating license application for the facility for facilities having construction permits issued before October 21, 1985; or

(iii) The date of issuance of the operating license for the facility for facilities having operating licenses; or

(iv) The date of issuance of the design approval under subpart E of part 52 of this chapter;

(v) The date of issuance of a manufacturing license under subpart H of part 52 of this chapter;

(vi) The date of issuance of the first construction permit issued for a duplicate design under subpart I of part 52 of this chapter; or

(vii) The date of issuance of a combined license under subpart G of part 52 of this chapter, provided that if the combined license references an early site permit, the provisions in § 52.39 apply with respect to the site characteristics, terms, and conditions of the early site permit. If the combined license references an early site review, the provisions in § 52.47 apply with respect to the staff site report. If the combined license references a design certification rule, the provisions in § 52.127(a) apply with respect to the design matters resolved in the design certification.

* * * * *

Appendix M to Part 50 [Removed]

21. Appendix M to Part 50 is removed.

Appendix N to Part 50 [Removed]

22. Appendix N to Part 50 is removed.

Appendix O to Part 50 [Removed]

23. Appendix O to Part 50 is removed.

Appendix Q to Part 50 [Removed]

24. Appendix Q to Part 50 is removed.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

25. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended,

1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

26. In § 51.20, paragraph (b)(6) is revised to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) * * *

(6) Issuance of a license to manufacture pursuant to Subpart H of Part 52 of this chapter.

* * * * *

27. Part 52 is revised to read as follows:

PART 52—ADDITIONAL LICENSING PROCESSES FOR NUCLEAR POWER PLANTS

General Provisions

Sec.
52.1 Scope.
52.3 Definitions.
52.5 Applicability of 10 CFR Part 50 provisions.
52.8 Information collection requirements: OMB approval.

Subpart A—Early Site Permits

52.11 Scope of subpart.
52.13 Relationship to Subpart F of 10 CFR Part 2 and Subpart B of this part.
52.15 Filing of applications.
52.17 Contents of applications.
52.18 Standards for review of applications.
52.19 Applicability of NRC requirements.
52.21 Hearings.
52.23 Referral to the ACRS.
52.24 Issuance of early site permit.
52.25 Extent of activities permitted.
52.27 Duration of permit.
52.28 Transfer of early site permit.
52.29 Application for renewal.
52.31 Criteria for renewal.
52.33 Duration of renewal.
52.35 Use of site for other purposes.
52.37 Reporting of defects and noncompliance; revocation, suspension, modification of permits for cause.
52.39 Finality of early site permit determinations.

Subpart B—Early Site Reviews

52.41 Scope of subpart.
52.43 Filing and contents of applications.
52.45 Notice of application.
52.46 Referral to the ACRS.
52.47 Issuance of site report.
52.49 Relationship to other subparts.

Subpart C—[Reserved]

Subpart D—Standard Design Certifications

52.101 Scope of subpart.
52.103 Relationship to other subparts.
52.105 Filing of applications.
52.107 Contents of applications.
52.109 Standards for review of applications.
52.111 Applicability of NRC requirements.
52.113 Administrative review of applications.
52.115 Referral to the ACRS.
52.117 Issuance of standard design certification.
52.119 Duration of certification.
52.121 Application for renewal.
52.123 Criteria for renewal.
52.125 Duration of renewal.
52.127 Finality of standard design certifications.

Subpart E—Standard Design Approvals

52.131 Scope of subpart.
52.133 Filing of applications.
52.135 Contents of applications.
52.137 Referral to the ACRS.
52.139 Staff approval of design.
52.141 Finality of the design approval.
52.143 Information requests.

Subpart F—[Reserved]

Subpart G—Combined Licenses

52.201 Scope of subpart.
52.203 Relationship to other subparts.
52.205 Filing of applications.
52.207 Contents of applications; general information.
52.209 Contents of applications; training and qualification of nuclear power plant personnel.
52.211 Contents of applications; technical information.
52.213 Standards for review of applications.
52.215 Applicability of NRC requirements.
52.217 Administrative review of applications.
52.219 Referral to the ACRS.
52.221 Environmental review.
52.223 Authorization to conduct site activities.
52.225 Exemptions and variances.
52.227 Issuance of combined licenses.
52.229 Inspection during construction.
52.231 Operation under a combined license.

Subpart H—Manufacturing Licenses

52.241 Scope of subpart.
52.243 Relationship to other subparts.
52.245 Filing and contents of applications.
52.247 Standards for review of applications.
52.249 Applicability of NRC requirements.
52.251 Referral to the ACRS.
52.253 Issuance of manufacturing license.
52.255 Duration of design approval.
52.257 Finality of the manufacturing license.

Subpart I—Duplicate Design Licenses

52.261 Scope of subpart.
52.263 Relationship to other subparts.
52.265 Filing and contents of applications.

Subpart J—[Reserved]

Subpart K—[Reserved]

Subpart L—[Reserved]

Subpart M—Enforcement

52.401 Violations.
52.403 Criminal penalties.

APPENDIX A—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

APPENDIX B—Design Certification Rule for the System 80+ Design

APPENDIX C—Design Certification Rule for the AP600 Design

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

General Provisions

§ 52.1 Scope.

This part governs the issuance of early site permits and staff site reports, design approvals and certifications, and combined, manufacturing, and duplicate design licenses for nuclear power facilities licensed under section 103 or 104b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), and Title II of the Energy Reorganization Act of 1974 (88 Stat. 1242). This part also gives notice to all persons who knowingly provide to any licensee, holder of, or applicant for an approval, certification, permit, site report, or license, or to a contractor, subcontractor, or consultant of any of them, components, equipment, materials, or other goods or services, that relate to the activities of a licensee, holder of, or applicant for an approval, certification, permit, site report, or license, subject to this part, that they may be individually subject to NRC enforcement action for violation of the provisions in 10 CFR 50.5.

§ 52.3 Definitions.

(a) As used in this part—

Combined license means a combined construction permit and operating license with conditions for a nuclear power facility issued pursuant to subpart C of this part.

Early site permit means a Commission approval, issued pursuant to subpart A of this part, for a site or sites for one or more nuclear power facilities.

Modular design means a nuclear power station that consists of two or more essentially identical nuclear reactors (modules), where each module

is a separate nuclear reactor capable of being safely operated independent of the state of completion or operating condition of any other module co-located on the same site, even though the nuclear power station may have some shared or common systems.

Prototype plant means a nuclear reactor that is used to test design features, such as the testing required by § 52.107(b)(2). The prototype plant is similar to the first-of-a-kind or standard plant design in all features and size, but may include additional safety features to protect the public, the plant staff, and the plant itself from the possible consequences of accidents during the testing period.

Standard design means a design which is sufficiently detailed and complete to support certification in accordance with subpart B of this part, and which is usable for a multiple number of units or at a multiple number of sites without reopening or repeating the review.

Standard design certification, design certification, or *certification* means a Commission approval, issued pursuant to Subpart B of this part, of a standard design for a nuclear power facility. A design so approved may be referred to as a certified standard design.

(b) All other terms in this part have the meaning set out in 10 CFR 50.2, or section 11 of the Atomic Energy Act, as applicable.

§ 52.5 Applicability of 10 CFR part 50 provisions.

Unless otherwise specifically provided for in this part, §§ 50.3, 50.4, 50.5, 50.7, 50.9, 50.10, 50.11, 50.12, 50.13, 50.50, 50.51, 50.52, 50.53, 50.54, 50.55, 50.55a, 50.56, 50.57, 50.58, 50.59, 50.70, 50.71, 50.72, 50.73, 50.74, 50.75, 50.78, 50.80, 50.81, 50.82, 50.90, 50.91, 50.92, 50.100, 50.101, 50.102, 50.103 and 50.109 of this chapter apply to a licensee, holder of, or applicant for an approval, certification, permit, site report, or license issued under this part. A licensee, holder of, or applicant for an approval, certification, permit, site report, or license issued under this part shall comply with all requirements in these provisions that are otherwise applicable to applicants or licensees under part 50 of this chapter.

§ 52.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC 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 approved the information collection requirements contained in this part under Control Number 3150–0151.

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.35, 52.39, 52.45, 52.105, 52.107, 52.111, 52.119, 52.121, 52.123, 52.127, 52.205, 52.207, 52.209, 52.211, 52.215, 52.223, 52.225, 52.229, 52.231, 52.243, and Appendices A, B, and C.

Subpart A—Early Site Permits

§ 52.11 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of early site permits for approval of a site or sites for one or more nuclear power facilities separate from the filing of an application for a construction permit, combined license, or duplicate design license for such a facility.

§ 52.13 Relationship to Subpart F of 10 CFR Part 2 and Subpart B of this part.

The procedures of this subpart do not replace those set out in subpart F of 10 CFR part 2 or subpart B of this part. Subpart F of 10 CFR part 2 applies only when an early partial decision of site suitability issues is sought in connection with an application for a permit to construct certain power facilities. Subpart B of this part applies only when NRC staff review of one or more site suitability issues is sought separately from and prior to the submittal of an application for a construction permit, combined license, or duplicate design license. A Staff Site Report issued under subpart B of this part in no way affects the authority of the Commission or the presiding officer in any proceeding under Subparts F or G of 10 CFR part 2. This subpart A applies when any person who may apply for a construction permit under 10 CFR part 50 or for a combined license under part 52 seeks an early site permit from the Commission separately from an application for a construction permit or a combined license for a facility.

§ 52.15 Filing of applications.

(a) Any person who may apply for a construction permit under 10 CFR part 50, or for a combined license under this part, may file an application for an early site permit with the Director of Nuclear Reactor Regulation. An application for an early site permit may be filed notwithstanding the fact that an application for a construction permit or a combined license has not been filed in connection with the site or sites for which a permit is sought.

(b) The application must comply with the filing requirements of 10 CFR 50.30 (a), (b), and (f) as they would apply to an application for a construction permit. The following portions of 10 CFR 50.4, which is referenced by 10 CFR 50.30(a)(1), are applicable: Paragraphs (a), (b) (1) (2) (3), (c), (d), and (e).

(c) The fees associated with the filing and review of an application for the initial issuance or renewal of an early site permit are set forth in 10 CFR part 170.

§ 52.17 Contents of applications.

(a)(1) The application must contain the information required by 10 CFR 50.33(a) through (d), the information required by 10 CFR 50.34 (a)(12) and (b)(10), and to the extent approval of emergency plans is sought under paragraph (b)(2)(ii) of this section, the information required by § 50.33 (g) and (j), and § 50.34 (b)(6)(v) of this chapter. The application must also contain a description and safety assessment of the site on which the facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in § 50.34(a)(1) of this chapter. Site characteristics must comply with part 100 of this chapter. In addition, the application should describe the following:

(i) The specific number, type, and thermal power level of the facilities, or range of possible facilities, for which the site may be used;

(ii) The boundaries of the site;

(iii) The proposed general location of each facility on the site;

(iv) The anticipated maximum levels of radiological and thermal effluents each facility will produce;

(v) The type of cooling systems, intakes, and outflows that may be associated with each facility;

(vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site;

(vii) The location and description of any nearby industrial, military, or transportation facilities and routes; and

(viii) The existing and projected future population profile of the area surrounding the site.

(2) A complete environmental report as required by 10 CFR 51.45 and 51.50 must be included in the application, provided, however, that such environmental report must focus on the

environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters, and provided further that the report need not include an assessment of the benefits (for example, need for power) of the proposed action or an evaluation of alternative energy sources, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.

(b)(1) The application must identify physical characteristics unique to the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans.

(2) The application may also either:

(i) Propose major features of the emergency plans, such as the exact sizes of the emergency planning zones, that can be reviewed and approved by NRC in consultation with the Federal Emergency Management Agency (FEMA) in the absence of complete and integrated emergency plans; or

(ii) Propose complete and integrated emergency plans for review and approval by the NRC, in consultation with FEMA, in accord with the applicable provisions of 10 CFR 50.47.

(3) Under paragraphs (b)(1) and (b)(2)(i) of this section, the application must include a description of contacts and arrangements made with local, state, and Federal governmental agencies with emergency planning responsibilities.

(i) Under the option set forth in paragraph (b)(2)(ii) of this section, the applicant shall make good faith efforts to obtain from the same governmental agencies certifications that:

(A) The proposed emergency plans are practicable;

(B) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(C) These agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(ii) The application must contain any certifications that have been obtained. If these certifications cannot be obtained, the application must contain information, including a utility plan, sufficient to show that the proposed plans nonetheless provide reasonable assurance that adequate protective measures can and will be taken, in the event of a radiological emergency at the site.

(c) If the applicant wishes to be able to perform, after grant of the early site permit, the activities at the site allowed by 10 CFR 50.10(e)(1) without first obtaining the separate authorization required by that section, the applicant shall propose, in the early site permit, a plan for redress of the site in the event that the activities are performed and the site permit expires before it is referenced in an application for a construction permit or a combined license issued under Subpart G of this part. The application must demonstrate that there is reasonable assurance that redress carried out under the plan will achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws.

§ 52.18 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the applicable standards set out in 10 CFR Part 50 and its appendices and 10 CFR part 100 as they apply to applications for construction permits for nuclear power plants. In addition, the Commission shall prepare an environmental impact statement during review of the application, in accordance with the applicable provisions of 10 CFR Part 51, provided, however, that the draft and final environmental impact statements prepared by the Commission focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters, and provided further that the statements need not include an assessment of the benefits (for example, need for power) of the proposed action or an evaluation of alternative energy sources, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. The Commission shall determine, after consultation with FEMA, whether the information required of the applicant by § 52.17(b)(1) shows that there is no significant impediment to the development of emergency plans, whether any major features of emergency plans submitted by the applicant under § 52.17(b)(2)(i) are acceptable, and whether any emergency plans submitted by the applicant under § 52.17(b)(2)(ii) provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

§ 52.19 Applicability of NRC requirements.

(a) An applicant shall comply with all requirements in 10 CFR Chapter I applicable to applicants for construction permits and limited work authorizations under 10 CFR 50.10.

(b) A holder of an early site permit shall comply with all requirements in 10 CFR Chapter I applicable to holders of construction permits and limited work authorizations under 10 CFR 50.10.

§ 52.21 Hearings.

An early site permit is a partial construction permit and is therefore subject to all procedural requirements in 10 CFR Part 2 which are applicable to construction permits, including the requirements for docketing in 10 CFR 2.101(a)(1)–(4), and the requirements for issuance of a notice of hearing in 10 CFR 2.104(a), (b)(1)(iv) and (v), (b)(2) to the extent it runs parallel to § 2.104(b)(1)(iv) and (v), and (b)(3). However, the designated sections may not be construed to require that the environmental report or draft or final environmental impact statement include an assessment of the benefits of the proposed action or an evaluation of alternative energy sources. In the hearing, the presiding officer shall also determine whether, taking into consideration the site criteria contained in 10 CFR Part 100, a reactor, or reactors, having characteristics that fall within the parameters for the site can be constructed and operated without undue risk to the health and safety of the public. All hearings conducted on applications for early site permits filed under this part are governed by the procedures contained in subpart G of 10 CFR part 2.

§ 52.23 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety.

§ 52.24 Issuance of early site permit.

After conducting a hearing under § 52.21 of this subpart and receiving the report to be submitted by the Advisory Committee on Reactor Safeguards under § 52.23 of this subpart, and upon determining that an application for an early site permit meets the applicable standards and requirements of the Atomic Energy Act and the Commission's regulations, and that notifications, if any, to other agencies or bodies have been duly made, the Commission shall issue an early site permit, in the form the Commission deems appropriate and necessary. The early site permit shall specify the site parameters and the terms and conditions of the early site permit.

§ 52.25 Extent of activities permitted.

(a) If an early site permit contains a site redress plan, the holder of the permit, or the applicant for a construction permit or a combined license who references the permit, may perform the activities at the site allowed by 10 CFR 50.10(e)(1) without first obtaining the separate authorization required by that section, if the final environmental impact statement prepared for the permit has concluded that the activities will not result in any significant adverse environmental impact which cannot be redressed.

(b) If the activities permitted by paragraph (a) of this section are performed at any site for which an early site permit has been granted, and the site is not referenced in an application for a construction permit or a combined license issued under subpart G of this part while the permit remains valid, then the early site permit must remain in effect solely for the purpose of site redress, and the holder of the permit shall redress the site in accordance with the terms of the site redress plan required by 10 CFR 52.17(c). If, before redress is complete, a use not envisaged in the redress plan is found for the site or parts thereof, the holder of the permit shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.27 Duration of permit.

(a) Except as provided in paragraph (b) of this section, an early site permit issued under this subpart may be valid for not less than ten nor more than twenty years from the date of issuance.

(b)(1) An early site permit continues to be valid beyond the date of expiration in any proceeding on a construction permit application or a combined license application that references the early site permit and is docketed either before the date of expiration of the early site permit, or, if a timely application for renewal of the permit has been filed, before the Commission has determined whether to renew the permit.

(2) An early site permit also continues to be valid beyond the date of expiration in any proceeding on an operating license application which is based on a construction permit that references the early site permit, and in any hearing held under 10 CFR 52.231 before operation begins under a combined license which references the early site permit.

(c) An applicant for a construction permit or combined license may, at its own risk, reference in its application a site for which an early site permit application has been docketed but not granted.

§ 52.28 Transfer of early site permit.

An application to transfer an early site permit will be processed under 10 CFR 50.80.

§ 52.29 Application for renewal.

(a) Not less than twelve nor more than thirty-six months prior to the expiration date, or any later renewal period, the permit holder may apply for a renewal of the permit. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application.

(b) Any person whose interests may be affected by renewal of the permit may request a hearing on the application for renewal. The request for a hearing must comply with 10 CFR 2.714. If a hearing is granted, notice of the hearing will be published in accordance with 10 CFR 2.703.

(c) An early site permit, either original or renewed, for which a timely application for renewal has been filed, remains in effect until the Commission has determined whether to renew the permit. If the permit is not renewed, it continues to be valid in certain proceedings in accordance with the provisions of § 52.27(b).

(d) The Commission shall refer a copy of the application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.31.

§ 52.31 Criteria for renewal.

(a) The Commission shall grant the renewal if the Commission determines that the site complies with:

(1) The Atomic Energy Act and the Commission's regulations and orders applicable and in effect at the time the site permit was originally issued;

(2) Any new requirements the Commission may wish to impose after a determination that there is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements; and

(3) The direct and indirect costs of implementation of those requirements are justified in view of this increased protection.

(b) A denial of renewal on this basis does not bar the permit holder or another applicant from filing a new application for the site which proposes changes to the site or the way that it is used to correct the deficiencies cited in the denial of the renewal.

§ 52.33 Duration of renewal.

Each renewal of an early site permit may be for not less than ten nor more than twenty years.

§ 52.35 Use of site for other purposes.

A site for which an early site permit has been issued under this subpart may be used for purposes other than those described in the permit, including the location of other types of energy facilities. The permit holder shall inform the Director of Nuclear Reactor Regulation of any significant uses for the site which have not been approved in the early site permit. The information about the activities must be given to the Director in advance of any actual construction or site modification for the activities. The information provided could be the basis for imposing new requirements on the permit, in accordance with the provisions of § 52.39. If the permit holder informs the Director that the holder no longer intends to use the site for a nuclear power plant, the Director shall terminate the permit.

§ 52.37 Reporting of defects and noncompliance; revocation, suspension, modification of permits for cause.

For purposes of 10 CFR part 21 and 10 CFR 50.100, an early site permit is a construction permit.

§ 52.39 Finality of early site permit determinations.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while an early site permit is in effect under §§ 52.27 or 52.33, the Commission may not change or impose new site characteristics, terms or conditions of the early site permit, including emergency planning requirements, on the early site permit or the site for which it was issued, unless the Commission determines that a modification is necessary either to bring the permit or the site into compliance with the Commission's regulations and orders applicable and in effect at the time the permit was issued, or to assure adequate protection of the public health and safety or the common defense and security.

(2) In making the findings required for issuance of a construction permit, operating license, combined license, or duplicate design license, or the findings required by § 52.231 of this part, if the application for the construction permit, operating license, combined license, or duplicate design license references an early site permit, the Commission shall treat as resolved those matters resolved in the proceeding on the application for issuance or renewal of the early site permit (with the exception of the

matters in paragraph (b) of this section), unless a contention is admitted that a nuclear reactor does not fit within one or more of the site parameters in the early site permit, or a petition is filed which alleges either that the site does not conform to the site characteristics in the early site permit, or that the terms and conditions of the early site permit should be modified.

(i) A contention that a nuclear reactor does not fit within one or more of the site parameters included in the site permit may be litigated in the same manner as other issues material to the proceeding.

(ii) A petition which alleges that the site does not conform to the site characteristics in the early site permit must include, or clearly reference, official NRC documents, documents prepared by or for the permit holder, or evidence admissible in a proceeding under subpart G of part 2 of this chapter, which show, prima facie, that the site does not conform to the site characteristics. The permit holder and NRC staff may file answers to the petition within the time specified in 10 CFR 2.730 for answers to motions by parties and staff. If the Commission, in its judgment, decides, on the basis of the petitions and any answers thereto, that the petition meets the requirements of this paragraph, that the issues are not exempt from adjudication under 5 U.S.C. 554(a)(3), that genuine issues of material fact are raised, and that settlement or other informal resolution of the issues is not possible, then the genuine issues of material fact raised by the petition must be resolved in accordance with the provisions in 5 U.S.C. 554, 556, and 557 which are applicable to determining application for initial licenses.

(iii) A petition which alleges that the terms and conditions of the early site permit should be modified will be processed in accordance with 10 CFR 2.206. Before construction commences, the Commission shall consider the petition and determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Construction under the construction permit or combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(iv) Prior to construction, the Commission shall find that the terms and conditions of the early site permit have been met.

(b) An applicant for a construction permit, operating license, duplicate design license, or combined license who has filed an application referencing an early site permit issued under this subpart shall update and correct the information that was provided under § 52.17(b), and discuss whether the new information materially changes the bases for compliance with the applicable requirements. New information which materially changes the bases for the Commission's determination on the matters in § 52.17(b) must be subject to litigation during the construction permit, operating license, duplicate design license, or combined license proceeding in the same manner as other issues material to those proceedings.

(c) An applicant for a construction permit, operating license, duplicate design license, or combined license who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit. Issuance of the variance must be subject to litigation during the construction permit, operating license, duplicate design license, or combined license proceeding in the same manner as other issues material to those proceedings.

Subpart B—Early Site Reviews

§ 52.41 Scope of subpart.

This subpart sets out procedures for the filing, staff review, and referral to the Advisory Committee on Reactor Safeguards (ACRS) of requests for early review of one or more site suitability issues relating to the construction and operation of certain utilization facilities separately from and prior to the submittal of applications for construction permits, combined licenses, or duplicate design licenses for the facilities. The subpart also sets out procedures for the preparation and issuance of Staff Site Reports and for their incorporation by reference in applications for the construction and operation of certain utilization facilities. The utilization facilities are those which are subject to § 51.20(b) of this chapter and are of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or are testing facilities. This subpart does not apply to proceedings conducted pursuant to subpart F of part 2 of this chapter.

§ 52.43 Filing and contents of applications.

(a) Any person may submit information regarding one or more site suitability issues to the Commission's Staff for its review separately from and prior to an application for a construction permit, a combined license, or a duplicate design license for a facility. The submittal must consist of the portion of the information required of applicants for construction permits by §§ 50.33(a) through (c) and (e) of this chapter, and, insofar as it relates to the issue(s) of site suitability for which early review is sought, by §§ 50.34(a)(1) and 50.30(f) of this chapter. Information with respect to operation of the facility at the projected initial power level need not be supplied.

(b) The submittal for early review of site suitability issue(s) must be made in the same manner and in the same number of copies as provided in §§ 50.4 and 50.30 of this chapter for license applications. The submittal must include sufficient information concerning the range of postulated facility design and operation parameters to enable the NRC staff to perform the requested review of site suitability issues. The submittal must contain suggested conclusions on the issues of site suitability submitted for review and must be accompanied by a statement of the bases or the reasons for those conclusions. The submittal must also list, to the extent possible, any long-range objectives for ultimate development of the site, state whether any site selection process was used in preparing the submittal, describe any site selection process used, and explain what consideration, if any, was given to alternative sites.

(c) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

§ 52.45 Notice of application.

The NRC staff shall publish a notice of docketing of the submittal in the **Federal Register**, and shall send a copy of the notice of docketing to the Governor of the State, local government bodies (county, municipality, or other political subdivision), and affected, Federally-recognized Indian Tribes. This notice must identify the location of the site, briefly describe the site suitability issue(s) under review, and invite comments from Federal, State, Tribal, and local agencies and interested persons within 120 days of publication or such other time as may be specified, for consideration by the staff in connection with the initiation or outcome of the review and, if appropriate, by the ACRS in connection with the outcome of their review. The person requesting the review shall serve a copy of the submittal on the Governor or other appropriate official of the State in which the site is located, and on the chief executive of the municipality in

which the site is located or, if the site is not located in a municipality, on the chief executive of the county.

§ 52.46 Referral to the ACRS.

The portion of the submittal containing information requested of applicants for construction permits by §§ 50.33 (a) through (c) and (e) and 50.34(a)(1) of this chapter will be referred to the ACRS for a review and report. There will be no referral to the ACRS unless early review of the site safety issues under § 50.34(a)(1) is requested.

§ 52.47 Issuance of site report.

(a) Upon completion of review by the NRC staff and, if appropriate, by the ACRS of a submittal under this subpart, the NRC staff shall prepare a Staff Site Report which identifies the location of the site, states the site suitability issues reviewed, explains the nature and scope of the review, states the conclusions of the staff regarding the issues reviewed and, states the reasons for those conclusions. Upon issuance of an NRC Staff Site Report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make available a copy of the report at the NRC Web site, *http://www.nrc.gov*. The NRC staff shall also send a copy of the report to the Governor of the State, local government bodies (county, municipality, or other political subdivision), and affected, Federally-recognized Indian Tribes.

(b) Any Staff Site Report prepared and issued in accordance with this subpart may be incorporated by reference, as appropriate, in an application for a construction permit, a combined license, or a duplicate design license for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specific in § 50.21(b)(2) or (3) or § 50.22 of this chapter or is a testing facility. The conclusions of the Staff Site Report will be reexamined by the staff where five years or more have elapsed between the issuance of the Staff Site Report and its incorporation by reference in an application.

(c) Issuance of a Staff Site Report does not constitute a commitment to issue a permit or license, to permit on-site work under § 50.10(e) of this chapter, or in any way affect the authority of the Commission, Atomic Safety and Licensing Board Panel, and other presiding officers in any proceeding under 10 CFR part 2 of this chapter.

§ 52.49 Relationship to other subparts.

The NRC staff will not conduct more than one review of site suitability issues with regard to a particular site prior to the full construction permit, combined license, or duplicate design license review required by subpart A of part 51 of this chapter. The NRC staff may decline to prepare and issue a Staff Site Report in response to a submittal under this subpart where it appears that—

(a) In cases where no review of the relative merits of the submitted site and alternative sites under subpart A of part 51 of this chapter is requested, there is a reasonable likelihood that further staff review would identify one or more preferable alternative sites and the staff review of one or more site suitability issues would lead to an irreversible and irretrievable commitment of resources prior to the submittal of the analysis of alternative sites in the Environmental Report that would prejudice the later review and decision on alternative sites under subpart F and/or G of part 2 and subpart A of part 51 of this chapter; or

(b) In cases where, in the judgment of the staff, early review of any site suitability issue or issues would not be in the public interest, considering:

(1) The degree of likelihood that any early findings on those issues would retain their validity in later reviews;

(2) The objections, if any, of cognizant state or local government agencies to the conduct of an early review on those issues; and

(3) The possible effect on the public interest of having an early, if not necessarily conclusive, resolution of those issues.

Subpart C—[Reserved]

Subpart D—Standard Design Certifications

§ 52.101 Scope of subpart.

This subpart sets forth the requirements and procedures applicable to Commission issuance of rules granting standard design certification for nuclear power facilities separate from the filing of an application for a construction permit, duplicate design license, or combined license for such a facility.

§ 52.103 Relationship to other subparts.

(a) Subpart H of this part governs the issuance of licenses to manufacture nuclear power reactors to be installed and operated at sites not identified in the manufacturing license application. Subpart I of this part governs licenses to construct and operate nuclear power reactors of duplicate design at multiple sites. These subparts may be used independently of the provisions in this subpart unless the applicant also wishes to use a certified standard design approved under this subpart.

(b) Subpart E of this part governs the NRC staff review and approval of preliminary and final standard designs. An NRC staff approval under subpart E of this part in no way affects the authority of the Commission or the presiding officer in any proceeding under subpart G of 10 CFR part 2.

§ 52.105 Filing of applications.

(a)(1) Any person may seek a standard design certification for an essentially complete nuclear power plant design which is an evolutionary change from light water reactor designs of plants which have been licensed and in commercial operation before April 18, 1989.

(2) Any person may also seek a standard design certification for a nuclear power plant design which differs significantly from the light water reactor designs described in paragraph (a)(1) of this section or utilizes simplified, inherent, passive, or other innovative means to accomplish its safety functions.

(b) An application for certification may be filed notwithstanding the fact that an application for a construction permit, a duplicate design license, or a combined license for such a facility has not been filed.

(c) The applicant must comply with the filing requirements of 10 CFR 50.30(a) and 50.30(b) as these requirements would apply to an application for a nuclear power plant construction permit.

(d) The fees associated with the review of an application for the initial issuance or renewal of a standard design certification are set forth in 10 CFR part 170.

§ 52.107 Contents of applications.

(a) The requirements of this paragraph apply to all applications for design certification.

(1) An application for design certification must contain:

(i) The technical information required of applicants for construction permits and operating licenses by 10 CFR parts 20, 50 and its appendices, and 10 CFR parts 73 and 100, and that is technically relevant to the design and not site-specific;

(ii) Demonstration of compliance with any technically relevant portions of the Three Mile Island requirements set forth in 10 CFR 50.34(f);

(iii) The site parameters postulated for the design, and an analysis and evaluation of the design in terms of those site parameters;

(iv) Proposed technical resolutions of those Unresolved Safety Issues and medium- and high-priority Generic

Safety Issues that are identified in the version of NUREG–0933 current on the date six months prior to application and that are technically relevant to the design;

(v) A design-specific probabilistic risk assessment;

(vi) Proposed inspections, tests, analyses, and acceptance criteria (ITAAC) that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, a plant that references the design is built and will operate in accordance with the design certification, the provisions of the Act, and the applicable Commission's rules and regulations.

(vii) The interface requirements to be met by those portions of the plant for which the application does not seek certification. These requirements must be sufficiently detailed to allow completion of the final safety analysis and design-specific probabilistic risk assessment required by paragraph (a)(1)(v) of this section;

(viii) Justification that compliance with the interface requirements of paragraph (a)(1)(vii) of this section is verifiable through inspection, testing (either in the plant or elsewhere), or analysis. The method to be used for verification of interface requirements must be included as part of the proposed inspections, tests, analyses, and acceptance criteria required by paragraph (a)(1)(vi) of this section; and

(ix) A representative conceptual design for those portions of the plant for which the application does not seek certification, to aid the NRC staff in its review of the final safety analysis and probabilistic risk assessment required by paragraph (a)(1)(v) of this section, and to permit assessment of the adequacy of the interface requirements in paragraph (a)(1)(vii) of this section.

(2) The application must contain a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. The information submitted for a design certification must include performance requirements and design information sufficiently detailed to permit the preparation of acceptance and inspection requirements by the NRC, and procurement specifications and construction and installation specifications by an applicant. The Commission will require, prior to design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if the information is necessary for the Commission to make its safety determination.

(3) The NRC staff shall advise the applicant on whether any technical information beyond that required by this section must be submitted.

(b) This paragraph applies, according to its provisions, to particular applications:

(1) The application for certification of a nuclear power plant design which is an evolutionary change from light water reactor designs of plants which have been licensed and in commercial operation before April 18, 1989, must provide an essentially complete nuclear power plant design except for site-specific elements such as the service water intake structure and the ultimate heat sink.

(2) Certification of a standard design that differs significantly from the light water reactor designs described in paragraph (b)(1) of this section or uses simplified, inherent, passive, or other innovative means to accomplish its safety functions will be granted only if—

(i)(A) The performance of each safety feature of the design has been demonstrated through either analysis, appropriate test programs, experience, or a combination thereof;

(B) Interdependent effects among the safety features of the design have been found acceptable by analysis, appropriate test programs, experience, or a combination thereof;

(C) Sufficient data exist on the safety features of the design to assess the analytical tools used for safety analyses over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions; and

(D) The scope of the design is complete except for site-specific elements such as the service water intake structure and the ultimate heat sink; or

(ii) There has been acceptable testing of a prototype plant over a sufficient range of normal operating conditions, transient conditions, and specified accident sequences, including equilibrium core conditions. If the criterion in paragraph (b)(2)(i)(D) of this section is not met, the testing of the prototype plant must demonstrate that the non-certified portion of the plant cannot significantly affect the safe operation of the plant.

(3) An application seeking certification of a modular design must describe the various options for the configuration of the plant and site, including variations in, or sharing of, common systems, interface requirements, and system interactions. The final safety analysis and the probabilistic risk assessment should also account for differences among the various options, including any restrictions which will be necessary during the construction and startup of a given module to ensure the safe operation of any module already operating.

§ 52.109 Standards for review of applications.

Applications filed under this subpart will be reviewed for compliance with the standards set out in 10 CFR parts 20, 50 and its appendices, and 10 CFR parts 73 and 100 as they apply to applications for construction permits and operating licenses for nuclear power plants that are technically relevant to the design proposed for the facility.

§ 52.111 Applicability of NRC requirements.

An applicant shall comply with all requirements in 10 CFR Chapter I applicable to applicants for construction permits and operating licenses under 10 CFR Chapter I.

§ 52.113 Administrative review of applications.

(a) A standard design certification is a rule that will be issued in accordance with the provisions of subpart H of 10 CFR part 2, as supplemented by the provisions of this section. The Commission shall initiate the rulemaking after an application has been filed under this subpart and shall specify the procedures to be used for the rulemaking.

(b) The rulemaking procedures must provide for notice and comment and an opportunity for an informal hearing before an Atomic Safety and Licensing Board. The procedures for the informal hearing must include the opportunity for written presentations made under oath or affirmation and for oral presentations and questioning if the Board finds them either necessary for the creation of an adequate record or the most expeditious way to resolve controversies. Ordinarily, the questioning in the informal hearing will be done by members of the Board, using either the Board's questions or questions submitted to the Board by the parties. The Board may also request authority from the Commission to use additional procedures, such as direct and cross examination by the parties, or may request that the Commission convene a formal hearing under subpart G of 10

CFR part 2 on specific and substantial disputes of fact, necessary for the Commission's decision, that cannot be resolved with sufficient accuracy except in a formal hearing. The NRC staff will be a party in the hearing.

(c) The decision in such a hearing will be based only on information on which all parties have had an opportunity to comment, either in response to the notice of proposed rulemaking or in the informal hearing.

(d) Proprietary information will be protected in the same manner and to the same extent as proprietary information submitted in connection with applications for construction permits and operating licenses under 10 CFR part 50. However, the design certification is published in 10 CFR Chapter I. The provisions of 10 CFR 2.790 do not limit the protection provided under this paragraph.

§ 52.115 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety.

§ 52.117 Issuance of standard design certification.

After conducting a rulemaking proceeding under § 52.113 on an application for a standard design certification and receiving the report to be submitted by the Advisory Committee on Reactor Safeguards under § 52.115, and upon determining that the application meets the applicable standards and requirements of the Atomic Energy Act and the Commission's regulations, the Commission shall issue a standard design certification in the form of a rule for the design which is the subject of the application.

§ 52.119 Duration of certification.

(a) Except as provided in paragraph (b) of this section, a standard design certification issued under this subpart is valid for fifteen years from the date of issuance.

(b) A standard design certification continues to be valid beyond the date of expiration in any proceeding on an application for a combined license or an operating license that references the standard design certification and is docketed either before the date of expiration of the certification, or, if a timely application for renewal of the certification has been filed, before the Commission has determined whether to renew the certification. A design certification also continues to be valid beyond the date of expiration in any hearing held under § 52.231 before operation begins under a combined license that references the design certification.

(c) An applicant for a construction permit or a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted.

§ 52.121 Application for renewal.

(a) Not less than twelve nor more than thirty-six months before the expiration of the initial fifteen-year period, or any later renewal period, any person may apply for renewal of the certification. An application for renewal must contain all information necessary to bring up to date the information and data contained in the previous application. The Commission will require, prior to renewal of certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if this information is necessary for the Commission to make its safety determination. Notice and comment procedures must be used for a rulemaking proceeding on the application for renewal. The Commission, in its discretion, may require the use of additional procedures in individual renewal proceedings.

(b) A design certification, either original or renewed, for which a timely application for renewal has been filed remains in effect until the Commission has determined whether to renew the certification. If the certification is not renewed, it continues to be valid in certain proceedings, in accordance with the provisions of § 52.119.

(c) The Commission shall refer a copy of the application for renewal to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety and shall apply the criteria set forth in § 52.123.

§ 52.123 Criteria for renewal.

(a) The Commission shall issue a rule granting the renewal if the design, either as originally certified or as modified during the rulemaking on the renewal, complies with the Atomic Energy Act and the Commission's regulations applicable and in effect at the time the certification was issued. The Commission may impose other requirements after it determines that there is a substantial increase in overall protection of the public health and safety or the common defense and security to be derived from the new requirements and that the direct and indirect costs of implementing those requirements are justified in view of this increased protection. In addition, the applicant for renewal may request an amendment to the design certification. The Commission shall grant the amendment request if it determines that the amendment will comply with the Atomic Energy Act and the Commission's regulations in effect at the time of renewal. If the amendment request entails such an extensive change to the design certification that an essentially new standard design is being proposed, an application for a design certification must be filed in accordance with this subpart.

(b) Denial of renewal does not bar the applicant, or another applicant, from filing a new application for certification of the design, which proposes design changes that correct the deficiencies cited in the denial of the renewal.

§ 52.125 Duration of renewal.

Each renewal of certification for a standard design will be for not less than ten nor more than fifteen years.

§ 52.127 Finality of standard design certifications.

(a)(1) Notwithstanding any provision in 10 CFR 50.109, while a standard design certification rule is in effect under § 52.119 or 52.125, the Commission may not modify, rescind, or impose new requirements on the certification information, whether on its own motion, or in response to a petition from any person, unless the Commission determines in a rulemaking that the change:

(i) Is necessary either to bring the certification information or the referencing plants into compliance with the Commission's regulations applicable and in effect at the time the certification was issued;

(ii) Is necessary to provide adequate protection of the public health and safety or the common defense and security; or

(iii) Reduces unnecessary regulatory burden and maintains protection to public health and safety and the common defense and security.

(2) The rulemaking procedures must provide for notice and comment and an opportunity for the party which applied for the certification to request an informal hearing which uses the procedures described in § 52.113 of this subpart.

(3) Any modification the NRC imposes on a design certification rule under paragraph (a)(1) of this section will be applied to all plants referencing

the certified design, except those to which the modification has been rendered technically irrelevant by action taken under paragraphs (a)(3) or (b)(1) of this section.

(4) While a design certification rule is in effect under § 52.119 or § 52.125, unless

(i) a modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time the certification was issued, or to assure adequate protection of the public health and safety or the common defense and security, and

(ii) special circumstances as defined in 10 CFR 50.12(a) are present, the Commission may not impose new requirements by plant-specific order on any part of the design of a specific plant referencing the design certification rule if that part was approved in the design certification. In addition to the factors listed in 10 CFR 50.12(a), the Commission shall consider whether the special circumstances which 10 CFR 50.12(a)(2) requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order.

(5) Except as provided in 10 CFR 2.758, in making the findings required for issuance of a combined license or operating license, or for any hearing under § 52.231, the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification rule.

(b)(1) An applicant or licensee who references a standard design certification rule may request an exemption from one or more elements of the design certification information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). In addition to the factors listed in § 50.12(a), the Commission shall consider whether the special circumstances that § 50.12(a)(2) requires to be present outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. The granting of an exemption on request of an applicant must be subject to litigation in the same manner as other issues in the operating license or combined license hearing.

(2) Subject to § 50.59, a licensee who references a standard design certification rule may make changes to the design of the nuclear power facility, without prior Commission approval, unless the proposed change involves a change to the design as described in the rule certifying the design. The licensee shall maintain records of all changes to the facility and these records must be maintained and available for audit until the date of termination of the license.

(c) The Commission will require, prior to granting a construction permit, combined license, or operating license which references a standard design certification rule, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information. This information may be acquired by appropriate arrangements with the design certification applicant.

Subpart E—Standard Design Approvals

§ 52.131 Scope of subpart.

This subpart sets out procedures for the filing, NRC staff review, and referral to the Advisory Committee on Reactor Safeguards of standard designs for a nuclear power reactor of the type described in § 50.22 of this chapter or major portions thereof.

§ 52.133 Filing of applications.

(a) Any person may submit a proposed preliminary or final standard design for a nuclear power reactor of the type described in 10 CFR 50.22 to the NRC staff for its review. The submittal may consist of either the preliminary or final design for the entire reactor facility or the preliminary or final design of major portions thereof.

(b) The submittal for review of the standard design must be made in the same manner and in the same number of copies as provided in §§ 50.4 and 50.30 of this chapter for license applications.

(c) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

§ 52.135 Contents of applications.

The submittal for review of the standard design must include the information described in §§ 50.33 (a) through (d) of this chapter and the applicable technical information required by § 50.34 of this chapter, as appropriate (other than that required by 10 CFR 50.34(a)(6) and (10), 50.34(b)(1), (6)(i), (ii), (iv), and (v) and 50.34(b)(7) and (8)), 10 CFR 50.34a, and 52.107(a)(1)(i) through (v), and (vii). The submittal must also include a description, analysis, and evaluation of the interfaces between the submitted design and the balance of the nuclear power plant. With respect to the requirements of § 50.34(a)(1) of this chapter, the submittal for review of a standard design must include the site parameters postulated for the design, and an analysis and evaluation of the design in terms of the postulated site parameters. The information submitted under § 50.34(a)(7) of this chapter, must be limited to the quality assurance program to be applied to the design, procurement, and fabrication of the structures, systems, and components for which design review has been requested. The information submitted under § 50.34(a)(9) of this chapter must be limited to the qualifications of the person submitting the standard design to design the reactor or major portion thereof. The submittal must also include information pertaining to design features that affect plans for coping with emergencies in the operation of the reactor or a major portion thereof.

§ 52.137 Referral to the ACRS.

Once the NRC staff has initiated a technical review of a submittal under this subpart, the submittal will be referred to the Advisory Committee on Reactor Safeguards (ACRS) for a review and report.

§ 52.139 Staff approval of design.

(a) Upon completion of their review of a submittal under this subpart, the NRC staff shall publish a determination in the **Federal Register** as to whether or not the preliminary or final design is acceptable, subject to appropriate conditions, and make an analysis of the design in the form of a report available at the NRC Web site, *http://www.nrc.gov*.

(b) A standard design approval issued under this subpart is valid for 15 years from the date of issuance. A design approval continues to be valid beyond the date of expiration in any proceeding on an application for a construction permit or an operating license which references the design approval and is docketed before the date of expiration of the design approval.

§ 52.141 Finality of the design approval.

(a) An approved design must be used by and relied upon by the NRC staff and the ACRS in their review of any individual facility license application that incorporates by reference a design approved in accordance with this paragraph unless there exists significant new information that substantially affects the earlier determination or other good cause.

(b) The determination and report by the NRC staff do not constitute a commitment to issue a permit or

license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Board Panel, and other presiding officers in any proceeding under part 2 of this chapter.

§ 52.143 Information requests.

Information requests to the approval holder regarding an approved design must be evaluated prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such evaluation performed by the NRC staff must be in accordance with 10 CFR 50.54(f) and must be approved by the Executive Director for Operations or his or her designee prior to issuance of the request.

Subpart F—[Reserved]

Subpart G—Combined Licenses

§ 52.201 Scope of subpart.

This subpart sets out the requirements and procedures applicable to Commission issuance of combined licenses for nuclear power facilities.

§ 52.203 Relationship to other subparts.

(a) An application for a combined license under this subpart may, but need not, reference a standard design certification or standard design approval issued under Subparts D or E of this part, or an early site permit or site report issued under subparts A or B of this part. In the absence of a demonstration that an entity other than the one originally sponsoring and obtaining a design certification is qualified to supply such design, the Commission will entertain an application for a combined license that references a standard design certification issued under subpart D of this part only if the entity that sponsored and obtained the certification supplies the certified design for the applicant's use.

(b) The Commission will require, prior to granting a combined license that references a standard design certification, that information normally contained in certain procurement specifications and construction and installation specifications be completed and available for audit if such information is necessary for the Commission to make its safety determinations, including the determination that the application is consistent with the certification information.

§ 52.205 Filing of applications.

(a) Any person except one excluded by 10 CFR 50.38 may file an application for a combined license for a nuclear power facility with the Director of Nuclear Reactor Regulation. The applicant shall comply with the filing requirements of 10 CFR 50.30 (a) and (b), as they would apply to an application for a nuclear power plant construction permit.

(b) The fees associated with the filing and review of the application are set forth in 10 CFR Part 170.

§ 52.207 Contents of applications; general information.

The application must contain all of the information required by 10 CFR 50.33, as that section would apply to applicants for construction permits and operating licenses, and 10 CFR 50.33a, as that section would apply to an applicant for a nuclear power plant construction permit. In particular, the applicant shall comply with the requirement of 10 CFR 50.33a(b) regarding the submission of antitrust information.

§ 52.209 Contents of applications; training and qualification of nuclear power plant personnel.

The application must describe the training program required by § 50.120 of this chapter. The training program described in the application must be established, implemented and maintained no later than eighteen (18) months prior to the scheduled date for initial loading of fuel, as provided for in § 52.231(a).

§ 52.211 Contents of applications; technical information.

(a) Early site permit.

(1) If the application references an early site permit, the application need not contain information or analyses submitted to the Commission in connection with the early site permit, but must contain, in addition to the information and analyses otherwise required:

(i) Information sufficient to demonstrate that the design of the facility falls within the site parameters specified in the early site permit;

(ii) Information necessary to resolve any other significant environmental issue with respect to the site not considered in any previous proceeding on the site or the design; and

(iii) A demonstration that all terms and conditions of the early site permit have been satisfied.

(2) If the application does not reference an early site permit, the applicant must comply with the requirements of 10 CFR 50.30(f) by including with the application an environmental report prepared in accordance with the provisions of Subpart A of 10 CFR part 51.

(3) If the application does not reference an early site permit which contains a site redress plan as described in § 52.17(c), and if the applicant wishes to be able to perform the activities at the site allowed by 10 CFR 50.10(e)(1), then the application must contain the information required by § 52.17(c).

(b) The application must contain the technically relevant information required of applicants for an operating license by 10 CFR 50.34 in a final safety analysis report.

(1) If the application does not reference a certified design, the application must comply with the requirements of § 52.107(a)(2) for level of design information, and must contain the technical information required by §§ 52.107(a)(1) (i), (ii), (iv), and (3); § 52.107(b)(2); and, if the design is modular, § 52.107(b)(3).

(2) If the application does not reference a certified design, the application must contain a plant-specific probabilistic risk assessment (PRA).

(3) If a prototype plant is used to comply with the requirements of § 52.107(b)(2), then the NRC may impose additional licensing requirements on siting, safety features, or operational conditions for the prototype plant to protect the public, the plant staff, and the plant itself from the possible consequences of failures during the testing period.

(4) An application referencing a certified design must include in the final safety analysis report the information approved for incorporation by reference in a design certification rule; describe those portions of the design that are not described in the certified design, such as the service water intake structure and the ultimate heat sink; demonstrate compliance with the interface requirements established for the design under § 52.107(a)(1); and have available for audit procurement specifications and construction and installation specifications in accordance with §§ 52.107(a)(2) and 52.203(b).

(5) An application referencing a certified design must include a plant-specific PRA that uses the design-specific PRA and is updated to account for site-specific design information and any design changes.

(c) The application must include the proposed inspections, tests and analyses, including those applicable to emergency planning, which the licensee shall perform and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are

performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the combined license, the provisions of the Atomic Energy Act, and the NRC's regulations.

(1) If the application references a certified standard design, the inspections, tests, analyses, and acceptance criteria contained in the certified design must apply to those portions of the facility design that are covered by the design certification.

(2) The application may include a notification that a required inspection, test, or analysis in the ITAAC has been successfully completed and that the corresponding acceptance criterion has been met. The **Federal Register** notification required by § 52.217 must indicate that the application includes this notification.

(d) The application must contain emergency plans that provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

(1) If the application references an early site permit, the application may incorporate by reference emergency plans, or major features of emergency plans, approved in connection with the issuance of the permit. If the application incorporates by reference an emergency plan or major features of such a plan, the application must include information that updates and corrects the information previously provided under § 52.17(b), and discuss whether the new information materially changes the bases for compliance with the applicable requirements. New information that materially changes the bases for the Commission's determination on the matters in § 52.17(b) must be subject to litigation during the combined license proceeding in the same manner as other issues material to those proceedings.

(2)(i) If the application does not reference an early site permit, or if no emergency plans were approved in connection with the issuance of the permit, the applicant shall make good faith efforts to obtain certifications from the local and State governmental agencies with emergency planning responsibilities that:

(A) The proposed emergency plans are practicable;

(B) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(C) These agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(ii) The application must contain any certifications that have been obtained. If these certifications cannot be obtained, the application must contain information, including a utility plan, sufficient to show that the proposed plans nonetheless provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

§ 52.213 Standards for review of applications.

Applications filed under this subpart will be reviewed according to the standards set out in 10 CFR parts 20, 50, 51, 55, 73, and 100 as they apply to applications for construction permits and operating licenses for nuclear power plants, and as those standards are technically relevant to the design proposed for the facility.

§ 52.215 Applicability of NRC requirements.

(a) An applicant shall comply with all requirements in 10 CFR Chapter I applicable to applicants for construction permits and limited work authorizations under 10 CFR 50.10.

(b) After a combined license is issued but before the Commission has authorized operation under § 52.231, the licensee shall comply with all requirements in this chapter of Title 10 applicable to holders of construction permits for nuclear power reactors.

(c) After the Commission has authorized operation under § 52.231, the licensee shall comply with all requirements in 10 CFR Chapter I applicable to holders of operating licenses for nuclear power reactors. Any limitations contained in 10 CFR part 50 regarding applicability of the provisions to certain classes of facilities continue to apply. Provisions of 10 CFR part 50 that do not apply to holders of combined licenses issued under this subpart include §§ 50.55(a), (b) and (d), and 50.58(a).

§ 52.217 Administrative review of applications.

A proceeding on a combined license is subject to all applicable procedural requirements contained in 10 CFR part 2, including the requirements for docketing (§ 2.101) and issuance of a notice of hearing (§ 2.104). If an applicant requests a Commission finding on certain ITAAC with the issuance of the combined license, then those ITAAC will be identified in the notice of hearing. All hearings on combined licenses are governed by the procedures contained in 10 CFR part 2.

§ 52.219 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application that concern safety and shall apply the criteria set forth in § 52.213, in accordance with the finality provisions of this part.

§ 52.221 Environmental review.

If the application references an early site permit and/or a design certification rule, the environmental review must focus on whether the design of the facility falls within the site parameters specified in the early site permit and any other significant environmental issue not considered in any previous proceeding on the site or the design. If the application does not reference an early site permit, the environmental review procedures set out in 10 CFR part 51 with respect to a construction permit must be followed, including the issuance of a final environmental impact statement, but excluding the issuance of a supplement under 10 CFR 51.95(a).

§ 52.223 Authorization to conduct site activities.

(a)(1) If the application references an early site permit that contains a site redress plan as described in § 52.17(c) the applicant is authorized by § 52.25 to perform the site preparation activities described in 10 CFR 50.10(e)(1).

(2) If the application does not reference an early site permit which contains a redress plan, the applicant may not perform the site preparation activities allowed by 10 CFR 50.10(e)(1) without first submitting a site redress plan in accord with § 52.211(a)(3) and obtaining the separate authorization required by 10 CFR 50.10(e)(1). Authorization may be granted only after the presiding officer in the proceeding on the application has made the findings and determination required by 10 CFR 50.10(e)(2) and has determined that the site redress plan meets the criteria in § 52.17(c).

(3) Authorization to conduct the activities described in 10 CFR 50.10(e)(3)(i) may be granted only after the presiding officer in the combined license proceeding makes the additional finding required by 10 CFR 50.10(e)(3)(ii).

(b) If, after an applicant for a combined license has performed the activities permitted by paragraph (a) of this section, the application for the license is withdrawn or denied, and the early site permit referenced by the application expires, then the applicant shall redress the site in accord with the

terms of the site redress plan. If a use not envisaged in the redress plan is found for the site or parts thereof before redress is complete, the applicant shall carry out the redress plan to the greatest extent possible consistent with the alternate use.

§ 52.225 Exemptions and variances.

(a) Applicants for a combined license under this subpart, or any amendment to a combined license, may include in the application a request, under 10 CFR 50.12, for an exemption from one or more of the Commission's regulations, including any part of a design certification rule. The Commission may grant such a request if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a) or 52.127(b)(1) if the exemption includes any part of the design certification rule.

(b) An applicant for a combined license, or any amendment to a combined license, who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit. Issuance of the variance is subject to litigation during the combined license proceeding in the same manner as other issues material to that proceeding.

§ 52.227 Issuance of combined licenses.

(a)(1) The Commission shall issue a combined license for a nuclear power facility upon finding that the applicable requirements of 10 CFR 50.40, 50.42, 50.43, 50.47, and 50.50 have been met, and that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's rules and regulations.

(2) The Commission may also find, at the time it issues the combined license, that certain acceptance criteria in one or more of the inspections, tests, analyses, and acceptance criteria (ITAAC) in the combined license have been met. Such a finding will preclude any required finding under § 52.231(g) with respect to that ITAAC.

(b)(1) The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's rules and regulations.

(2) Any modification to, addition to, or deletion from the terms of a combined license, including any modification to, addition to, or deletion from the inspections, tests, analyses, or related acceptance criteria contained in the license is a proposed amendment to the license. There must be an opportunity for a hearing on these amendments.

(3) The Commission may issue and make immediately effective any amendment to a combined license upon a determination by the Commission that the amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. The amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. The amendment will be processed in accordance with the procedures specified in 10 CFR 50.91.

(c) If the combined license does not reference a certified design, then a licensee may make changes in the facility as described in the final safety analysis report (as updated), make changes in the procedures as described in the final safety analysis report (as updated), and conduct tests or experiments not described in the final safety analysis report (as updated) under the applicable change processes in 10 CFR part 50 (*e.g.*, § 50.54, § 50.59, or § 50.90).

(d) If the combined license references a certified design, then—

(1) Changes to or departures from information within the scope of the referenced design certification rule are subject to the applicable change processes in that rule; and

(2) Changes that are not within the scope of the referenced design certification rule are subject to the applicable change processes in 10 CFR part 50 unless they involve changes to or non-compliance with information within the scope of the referenced design certification rule, in which case the applicable provisions of this section and/or the design certification rule apply.

(e) A combined license is issued for a specified period not to exceed 40 years from the date on which the Commission makes the finding required under § 52.231(g).

§ 52.229 Inspection during construction.

(a) Holders of combined licenses shall comply with the provisions of 10 CFR 50.70 and 50.71.

(b) With respect to activities subject to an ITAAC, an applicant for a combined license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and pre-operational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

(c) The licensee shall notify the NRC that the inspections, tests, or analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

(d) In the event that an activity is subject to an ITAAC and the licensee has not demonstrated that the ITAAC has been satisfied, the licensee may take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with the applicable change process in the referenced design certification rule, or request a license amendment under § 52.227(b), as applicable.

(e) The NRC staff shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. At appropriate intervals during construction, the NRC shall publish notices in the **Federal Register** of the successful completion of inspections, tests, and analyses.

§ 52.231 Operation under a combined license.

(a) Not less than one hundred and eighty days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined license under Subpart G of this part, the Commission shall publish notice of intended operation in the **Federal Register**. That document must provide that any person whose interest may be affected by operation of the plant may, within 60 days, request that the Commission hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the ITAAC in the combined license, except for those ITAAC that the Commission found were met under § 52.227(a)(2).

(b) A request for hearing under paragraph (a) of this section must show, prima facie, that—

(1) One or more of the acceptance criteria of the ITAAC in the combined license have not been, or will not be met; and

(2) The specific operational consequences of nonconformance that would be contrary to providing reasonable assurance of adequate

protection of the public health and safety.

(c) After receiving a request for a hearing, the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(d) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under paragraph (a) of this section, and shall state its reasons therefor.

(e) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by paragraph (a) of this section or the anticipated date for initial loading of fuel into the reactor, whichever is later.

(f) A petition to modify the terms and conditions of the combined license will be processed as a request for action in accord with 10 CFR 2.206. The petitioner shall file the petition with the Secretary of the Commission. Before the licensed activity allegedly affected by the petition (fuel loading, low power testing, *etc.*) commences, the Commission shall determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Fuel loading and operation under the combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(g) Prior to operation of the facility, the Commission shall find that the acceptance criteria of the ITAAC in the combined license are met, except for those ITAAC that the Commission found were met under § 52.227(a)(2). If the combined license is for a modular design, each reactor module may require a separate finding as construction proceeds.

(h) After the Commission has made the finding in paragraph (g) of this section, the ITAAC do not, by virtue of their inclusion in the design certification rule or combined license, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a hearing under paragraph (a) of this section, their expiration will occur upon final Commission action in such proceeding. However, subsequent changes to the facility or procedures described in the final safety analysis report (as updated) must comply with the requirements in § 52.227(c) or (d), as applicable.

Subpart H—Manufacturing Licenses

§ 52.241 Scope of subpart.

(a) Section 101 of the Atomic Energy Act of 1954, as amended, and § 50.10 of this chapter require a Commission license to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import or export any production or utilization facility. The regulations in 10 CFR part 50 require the issuance of a construction permit by the Commission before commencement of construction of a production or utilization facility, and the issuance of an operating license before operation of the facility. The provisions of 10 CFR part 50 relating to the facility licensing process are, in general, predicated on the assumption that the facility will be assembled and constructed on the site at which it is to be operated. In those circumstances, both facility design and site-related issues can be considered in the initial, construction permit stage of the licensing process.

(b) Under the Atomic Energy Act, a license may be sought and issued authorizing the manufacture of facilities but not their construction and installation at the sites on which the facilities are to be operated. Prior to the ''commencement of construction,'' as defined in § 50.10(c) of this chapter, of a facility (manufactured under such a Commission license) on the site at which it is to operate—that is preparation of the site and installation of the facility—a construction permit, combined license, or duplicate plant license that, among other things, reflects approval of the site on which the facility is to be operated, must be issued by the Commission. This subpart sets out the particular requirements and provisions applicable to situations where nuclear power reactors to be manufactured under a Commission license and subsequently installed at the site under a Commission construction permit, combined license, or duplicate plant license, are of the type described in § 50.22 of this chapter.

§ 52.243 Relationship to other subparts.

(a) Referencing a manufacturing license. An application for a construction permit, operating license or combined license to construct a nuclear power plant which is to be manufactured under a manufacturing license issued under this subpart need not contain the information or analyses that have been previously approved by the Commission in connection with the issuance of the manufacturing license. The application must reference the manufacturing license, and provide sufficient information to demonstrate that the site on which the reactor(s) is to be located and operated fits within the postulated site parameters specified in the manufacturing license.

(b) Amendment of manufacturing license to reflect final reactor design. The holder of a manufacturing license issued under this subpart shall submit to the Commission the final design of the nuclear power reactor(s) covered by the license as soon as such design has been completed. The submittal must be in the form of an application for amendment of the manufacturing license.

(c) Application for construction permit or combined license referencing a manufacturing license. An application for a permit to construct a nuclear power reactor(s) or a combined license that is the subject of an application for a manufacturing license pursuant to this subpart need not contain information or analyses that have previously been submitted to the Commission in connection with the application for a manufacturing license. However, the application must comply with §§ 50.34(a) and 50.34a of this chapter, and provide sufficient information to demonstrate that the site on which the reactor(s) is to be operated falls within the postulated site parameters specified in the relevant manufacturing license application.

(d) Approval of construction permit or combined license referencing a manufacturing license. The Commission may issue a permit to construct a nuclear power reactor(s) or a combined license that is the subject of an application for a manufacturing license pursuant to this subpart if the Commission—

(1) Finds that the site on which the reactor is to be operated falls within the postulated site parameters specified in the relevant application for a manufacturing license; and

(2) Makes the findings otherwise required by 10 CFR part 50. A construction permit or combined license may not be issued until the relevant manufacturing license has been issued.

(e) Approval of operating license referencing a manufacturing license. An operating license for a nuclear power reactor(s) that has been manufactured under a Commission license issued under this subpart may be issued by the Commission under 10 CFR 50.57 and

subpart A of part 51 of this chapter except that the Commission shall find, under 10 CFR 50.57(a)(1), that construction of the reactor(s) has been substantially completed in conformity with both the manufacturing license and the construction permit and the applications therefor, as amended, and the provisions of the Act, and the rules and regulations of the Commission. Notwithstanding the other provisions of this paragraph, no application for an operating license for a nuclear power reactor(s) that has been manufactured under a Commission license issued under this subpart will be docketed until the application for an amendment to the relevant manufacturing license required by § 52.249 has been docketed.

(f) Prohibition against transport of nuclear power reactor manufactured under this subpart. The prohibition in § 50.10(c) of this chapter against commencement of construction of a production or utilization facility prior to issuance of a construction permit applies to the transport of a nuclear power reactor(s) manufactured pursuant to this subpart from the manufacturing facility to the site at which the reactor(s) will be installed and operated. In addition, such nuclear power reactor(s) may not be removed from the manufacturing site until the final design of the reactor(s) has been approved by the Commission in accordance with § 52.249.

§ 52.245 Filing and contents of applications.

(a) An application for a manufacturing license under this subpart must be submitted, as specified in § 50.4 of this chapter and meet all the requirements of §§ 50.34(a)(1)–(9) and 50.34a(a) and (b) of this chapter except that the preliminary safety analysis report must be designated as a ''design report'' and any required information or analyses relating to site matters must be predicated on postulated site parameters which must be specified in the application. The application must also include information pertaining to design features of the proposed reactor(s) that affect plans for coping with emergencies in the operation of the reactor(s).

(b) An applicant for a manufacturing license under this subpart shall submit with the application an environmental report as required of applicants for construction permits in accordance with subpart A of part 51 of this chapter. However, the report must be directed at the manufacture of the reactor(s) at the manufacturing site; and, in general terms, at the construction and operation of the reactor(s) at a hypothetical site or sites having characteristics that fall within the postulated site parameters. The related draft and final environmental impact statement prepared by the NRC staff will be similarly directed.

(c) The financial information submitted under § 50.33(f) of this chapter and Appendix C of part 50 must be directed at a demonstration of the financial qualifications of the applicant for the manufacturing license to carry out the manufacturing activity for which the license is sought.

(d) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

§ 52.247 Standards for review of application.

Applications filed under this subpart will be reviewed for compliance with the standards set out in 10 CFR part 20, part 50 and its appendices, and parts 73 and 100 as they apply to applications for construction permits and operating licenses for nuclear power plants, except as otherwise specified in this subpart or as the context otherwise indicates. The requirement in § 50.58 of this chapter for review of the application by the Advisory Committee on Reactor Safeguards and the holding of a public hearing, apply in context, with respect to matters of radiological health and safety, environmental protection, and the common defense and security, to licenses under this subpart to manufacture nuclear power reactors (manufacturing licenses) to be operated at sites not identified in the license application.

§ 52.249 Applicability of NRC requirements.

An applicant shall comply with all requirements in this chapter of Title 10 applicable to applicants for construction permits and operating licenses under this chapter of Title 10, except §§ 50.10(b) and (c), 50.12(b), 50.23, 50.30(d), 50.34(a)(10), 50.34a(c), 50.35(a) and (c), 50.40(a), 50.45, 50.55(d), 50.56 of this chapter and Appendix J of 10 CFR part 50 do not apply to manufacturing licenses. Appendices E and H of 10 CFR part 50 apply to manufacturing licenses only to the extent that the requirements of these appendices involve facility design features.

§ 52.251 Referral to the ACRS.

The Commission shall refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS shall report on those portions of the application which concern safety.

§ 52.253 Issuance of manufacturing license.

(a) The Commission may issue a license to manufacture one or more nuclear power reactors to be operated at sites not identified in the license application if the Commission finds that:

(1) The applicant has described the proposed design of and the site parameters postulated for the reactor(s), including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features of components incorporated therein for the protection of the health and safety of the public.

(2) Further technical or design information that may be required to complete the design report and which can reasonably be left for later consideration, will be supplied in a supplement to the design report.

(3) Safety features or components, if any, that require research and development have been described by the applicant and the applicant has identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with the features of components; and

(4) On the basis of the foregoing, there is reasonable assurance that:

(i) Such safety questions will be satisfactorily resolved before any of the proposed nuclear power reactor(s) are removed from the manufacturing site; and

(ii) Taking into consideration the site criteria contained in part 100 of this chapter, the proposed reactor(s) can be constructed and operated at sites having characteristics that fall within the site parameters postulated for the design of the reactor(s) without undue risk to the health and safety of the public.

(5) The applicant is technically and financially qualified to design and manufacture the proposed nuclear power reactor(s).

(6) The issuance of a license to the applicant will not be inimical to the common defense and security or to the health and safety of the public.

(7) On the basis of the evaluations and analyses of the environmental effects of the proposed action required by subpart A of part 51 of this chapter and § 52.245(b), the action called for is the issuance of the license.

(b) When an applicant has supplied initially all of the technical information required to complete the application, including the final design of the reactor(s), the findings required for the issuance of the license will be

appropriately modified to reflect that fact.

(c) Each manufacturing license issued under this subpart will specify the number of nuclear power reactors authorized to be manufactured and the latest date of the completion of the manufacture of all such reactors. Upon good cause shown, the Commission will extend the completion date for a reasonable period of time.

§ 52.255 Duration of design approval.

A nuclear plant design that is approved as part of the issuance of a manufacturing license is valid for five years from the date of issuance of the manufacturing license.

§ 52.257 Finality of the manufacturing license.

In making the findings required by this part for the issuance of a construction permit or an operating license for a nuclear power reactor(s) that has been manufactured under a Commission license issued under this subpart, or an amendment to such a manufacturing license, construction permit, or operating license, the Commission will treat as resolved those matters which have been resolved at an earlier stage of the licensing process, unless there exists significant new information that substantially affects the conclusion(s) reached at the earlier stage or other good cause.

Subpart I—Duplicate Design Licenses

§ 52.261 Scope of subpart.

(a) Section 101 of the Atomic Energy Act of 1954, as amended, and § 50.10 of this chapter require a Commission license to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import or export any production or utilization facility. The regulations in 10 CFR part 50 require the issuance of a construction permit by the Commission before commencement of construction of a production or utilization facility, except as provided in § 50.10(e) of this chapter, and the issuance of an operating license before the operation of the facility.

(b) The Commission's regulations in 10 CFR part 2 specifically provide for the holding of hearings on particular issues separately from other issues involved in hearings in licensing proceedings (10 CFR 2.761a and 10 CFR part 2, appendix A, section I(c)), and for the consolidation of adjudicatory proceedings and of the presentations of parties in adjudicatory proceedings such as licensing proceedings (10 CFR 2.715a and 2.716).

(c) This subpart sets out the particular requirements and provisions applicable to situations in which applications are filed by one or more applicants for licenses to construct and operate nuclear power reactors of essentially the same design to be located at different sites.

(d) If the design for the power reactor(s) proposed in a particular application is not identical to the others, that application may not be processed under this subpart and subpart D of part 2 of this chapter.

§ 52.263 Relationship to other subparts.

Except as otherwise specified in this subpart or as the context otherwise indicates, the provisions of 10 CFR part 50, applicable to construction permits and operating licenses, including the requirement in § 50.58 of this chapter for review of the application by the Advisory Committee on Reactor Safeguards and the holding of public hearings, apply to construction permits and operating license subject to this subpart.

§ 52.265 Filing and contents of applications.

(a) Applications for construction permits submitted under this subpart must include the information required by §§ 50.33, 50.33a, 50.34(a) and 50.34a (a) and (b) of this chapter, and be submitted as specified in § 50.4 of this chapter. The applicant shall also submit the information required by § 51.50 of this chapter.

(b) For the technical information required by §§ 50.34(a)(1) through (5) and (8) and 50.34a (a) and (b) of this chapter, reference may be made to a single preliminary safety analysis of the design [1] which, for the purposes of 10 CFR 50.34(a)(1) includes one set of site parameters postulated for the design of the reactors, and an analysis and evaluation of the reactors in terms of such postulated site parameters. This single preliminary safety analysis must also include information pertaining to design features of the proposed reactors that affect plans for coping with emergencies in the operation of the reactors, and must describe the quality assurance program with respect to aspects of design, fabrication, procurement and construction that are common to all of the reactors.

(c) Applications for operating licenses submitted pursuant to this subpart must include the information required by §§ 50.33, 50.34(b) and (c), and 50.34a(c) of this chapter. The applicant shall also submit the information required by § 51.53 of this chapter. For the technical information required by §§ 50.34(b)(2) through (5) and 50.34a(c), reference may be made to a single final safety analysis of the design.

(d) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

[1] As used in this subpart, the design of a nuclear power reactor included in a single referenced safety analysis report means the design of those structures, systems, and components important to radiological health and safety and the common defense and security.

Subpart J—[Reserved]

Subpart K—[Reserved]

Subpart L—[Reserved]

Subpart M—Enforcement

§ 52.401 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued under those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued under the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 52.403 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in this part 52 are issued under one or more of sections 161b, 161i, or 160o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in this part 52 that are not issued under sections 161b,

161i, or 161o for the purposes of section 223 are as follows: §§ 52.1, 52.3, 52.5, 52.8, 52.11, 52.13, 52.15, 52.17, 52.18, 52.19, 52.21, 52.23, 52.24, 52.27, 52.29, 52.31, 52.33, 52.37, 52.39, 52.101, 52.103, 52.105, 52.107, 52.109, 52.111, 52.113, 52.115, 52.117, 52.119, 52.121, 52.123, 52.125, 52.201, 52.203, 52.205, 52.207, 52.209, 52.211, 52.213, 52.215, 52.217, 52.219, 52.221, 52.225, 52.227, 52.231, 52.401, 52.403.

Appendix A—Design Certification Rule for the U.S. Advanced Boiling Water Reactor

I. Introduction

Appendix A constitutes the standard design certification for the U.S. Advanced Boiling Water Reactor (ABWR) design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the U.S. ABWR design was GE Nuclear Energy.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;

2. Design descriptions;

3. Inspections, tests, analyses, and acceptance criteria (ITAAC);

4. Significant site parameters; and

5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.107, with the exception of generic technical specifications and conceptual design information;

2. Information required for a final safety analysis report under 10 CFR 50.34;

3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and

4. Combined license (COL) action items (COL license information), which identify certain matters that shall be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under Section VIII.B.6.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means: (i) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or (ii) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the U.S. ABWR Design Control Document, GE Nuclear Energy, Revision 4 dated March 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for examination and copying at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, and the ''Technical Support Document for the ABWR'' are not part of this appendix. Tier 2 references to the probabilistic risk assessment (PRA) in the ABWR Standard Safety Analysis Report do not incorporate the PRA into Tier 2.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the U.S. ABWR design or NUREG–1503, ''Final Safety Evaluation Report related to the Certification of the Advanced Boiling Water Reactor Design,'' (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site-specific design parameters, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.207, 52.209, and 52.211, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;

2. Include, as part of its application:

a. A plant-specific DCD containing the same information and utilizing the same organization and numbering as the generic DCD for the U.S. ABWR design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by Section X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.107(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the U.S. ABWR DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in Paragraph B of this section, the regulations that apply to the U.S. ABWR design are in 10 CFR parts 20, 50, 73, and 100, codified as of May 2, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1503) and Supplement No. 1.

B. The U.S. ABWR design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

2. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Boron, Chloride, and Dissolved Gases; and

3. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the U.S. ABWR design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the U.S. ABWR design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.127(a)(4) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held pursuant to 10 CFR 52.231, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the U.S. ABWR design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the U.S. ABWR design;

3. All generic changes to the DCD pursuant to and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD pursuant to and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in Section VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in Section VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the U.S. ABWR design and Revision 1 of the Technical Support Document for the U.S. ABWR, dated December 1994, for plants referencing this appendix whose site parameters are within those specified in the Technical Support Document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.127(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the DCD for the U.S. ABWR design, in order to request or participate in the hearing required by 10 CFR 52.217 or the hearing provided under 10 CFR 52.231, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from GE Nuclear Energy. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.217 or 10 CFR 52.231. If GE Nuclear Energy declines to provide the information sought, GE Nuclear Energy shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to GE Nuclear Energy), and GE Nuclear Energy's response. The Commission and presiding officer may order GE Nuclear Energy to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from June 11, 1997, except as provided for in 10 CFR 52.119(b) and 52.121(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.127(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.127(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.127(b)(1) and 52.227(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.127(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.119 or 52.125, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.231(a), who believes that an applicant or licensee who references this appendix has not complied with Section VIII.B.5 of this appendix when departing from Tier 2 information, may petition the NRC to admit into the proceeding such a contention. In addition in compliance with the general requirements of 10 CFR 2.714(b)(2), the petition must demonstrate that the departure does not comply with Section VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.231 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with Section VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.127(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Fuel burnup limit (4.2).

(2) Fuel design evaluation (4.2.3).

(3) Fuel licensing acceptance criteria (Appendix 4B).

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.231(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC N–690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel system and assembly design (4.2), except burnup limit.

(7) Nuclear design (4.3).

(8) Equilibrium cycle and control rod patterns (App. 4A).

(9) Control rod licensing acceptance criteria (App. 4C).

(10) Instrument setpoint methodology.

(11) EMS performance specifications and architecture.

(12) SSLC hardware and software qualification.

(13) Self-test system design testing features and commitments.

(14) Human factors engineering design and implementation process.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.758(b) are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.231(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. The petition must comply with the general requirements of 10 CFR 2.714(b)(2) and must demonstrate why special circumstances as defined in 10 CFR 2.758(b) are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational

requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.227(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.227(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.231(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.231(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.231(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.227 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD, which reflect the generic changes to the generic DCD and the plant-specific departures made pursuant to Section VIII of this appendix. These updates must be filed in accordance with the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs B.1 and B.2 of this section must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the plant-specific DCD.

b. During the interval from the date of application to the date of issuance of a license, the report and any updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. During the interval from the date of issuance of a license to the date the Commission makes its findings under 10 CFR 52.231(g), the report must be submitted quarterly. Updates to the plant-specific DCD must be submitted annually.

d. After the Commission has made its finding under 10 CFR 52.231(g), reports and updates to the plant-specific DCD may be submitted annually or along with updates to the site-specific portion of the final safety analysis report for the facility at the intervals required by 10 CFR 50.71(e), or at shorter intervals as specified in the license.

Appendix B—Design Certification Rule for the System 80+ Design

I. Introduction

Appendix B constitutes design certification for the System 80+[2] standard plant design, in accordance with 10 CFR Part 52, Subpart B. The applicant for certification of the System 80+ design was Combustion Engineering, Inc. (ABB–CE), which is now Westinghouse Electric Company LLC.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;

2. Design descriptions;

3. Inspections, tests, analyses, and acceptance criteria (ITAAC);

4. Significant site parameters; and

5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.107, with the exception of generic technical specifications and conceptual design information;

2. Information required for a final safety analysis report under 10 CFR 50.34;

3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and

4. Combined license (COL) action items (COL license information), which identify

[2] ''System 80+'' is a trademark of Westinghouse Electric Company LLC.

certain matters that shall be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under Section VIII.B.6 of this appendix.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

(1) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the System 80+ Design Control Document, ABB–CE, with revisions dated January 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for examination and copying at the NRC Public Document Room located at One White Flint North 11555 Rockville Pike (first floor) Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, and the Technical Support Document for the System 80+ design are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the System 80+ design or NUREG–1462, ''Final Safety Evaluation Report related to the Certification of the System 80+ Design,'' (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site-specific design parameters, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.207, 52.209, and 52.211, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;

2. Include, as part of its application:

a. A plant-specific DCD containing the same information and utilizing the same organization and numbering as the generic DCD for the System 80+ design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by Section X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.107(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information referenced in the System 80+ DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the System 80+ design are in 10 CFR parts 20, 50, 73, and 100, codified as of May 9, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1462) and Supplement No. 1.

B. The System 80+ design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;

2. Paragraphs (f)(2) (vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms;

3. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Hydrogen, Boron, Chloride, and Dissolved Gases;

4. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration; and

5. Paragraphs III.A.1(a) and III.C.3(b) of Appendix J to 10 CFR part 50—Containment Leakage Testing.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the System 80+ design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the System 80+ design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.127(a)(4) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held pursuant to 10 CFR 52.231, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the System 80+ design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the System 80+ design;

3. All generic changes to the DCD pursuant to and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD pursuant to and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in Section VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in Section VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the System 80+ design and the Technical Support Document for the System 80+ design, dated January 1995, for plants referencing this appendix whose site parameters are within those specified in the Technical Support Document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.127(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary information or other secondary references in the DCD for the System 80+ design, in order to request or participate in the hearing required by 10 CFR 52.217 or the hearing provided under 10 CFR 52.231, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.217 or 10 CFR 52.231. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from June 20, 1997 except as provided for in 10 CFR 52.119(b) and 52.121(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.127(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.127(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.127(b)(1) and § 52.227(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.127(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.119 or 52.125, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2 if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would—

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if—

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.231(a), who believes that an applicant or licensee who references this appendix has not complied with Section VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.714(b)(2), the petition must demonstrate that the departure does not comply with Section VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC

acceptance criterion in the case of a 10 CFR 52.231 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with Section VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.127(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burnup.

(2) Control room human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.231(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC N–690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel and control rod design, except burnup limit.

(7) Instrumentation & controls setpoint methodology.

(8) Instrumentation & controls hardware and software changes.

(9) Instrumentation & controls environmental qualification.

(10) Seismic design criteria for non-seismic category I structures.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.758(b) are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.231(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.714(b)(2) and must demonstrate why special circumstances as defined in 10 CFR 2.758(b) are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.227(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.227(b). Such rulemaking changes to the ITAAC must meet the requirements of Section VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.231(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.231(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.231(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.227 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD, which reflect the generic changes to the generic DCD and the plant-specific departures made pursuant to Section VIII of this appendix. These updates must be filed in accordance with the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs B.1 and B.2 of this section must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the plant-specific DCD.

b. During the interval from the date of application to the date of issuance of a license, the report and any updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. During the interval from the date of issuance of a license to the date the Commission makes its findings under 10 CFR 52.231(g), the report must be submitted quarterly. Updates to the plant-specific DCD must be submitted annually.

d. After the Commission has made its finding under 10 CFR 52.231(g), reports and updates to the plant-specific DCD may be submitted annually or along with updates to the site-specific portion of the final safety analysis report for the facility at the intervals required by 10 CFR 50.71(e), or at shorter intervals as specified in the license.

Appendix C—Design Certification Rule for the AP600 Design

I. Introduction

Appendix C constitutes the standard design certification for the AP600[3] design, in accordance with 10 CFR Part 52, Subpart B. The applicant for certification of the AP600 design is Westinghouse Electric Company LLC.

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;

2. Design descriptions;

3. Inspections, tests, analyses, and acceptance criteria (ITAAC);

4. Significant site parameters; and

5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B of this appendix to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.107, with the exception of generic technical specifications and conceptual design information;

2. Information required for a final safety analysis report under 10 CFR 50.34;

3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and

4. Combined license (COL) action items (combined license information), which identify certain matters that must be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

5. The investment protection short-term availability controls in Section 16.3 of the DCD.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in Section VIII.B.6 of this appendix. This designation expires for some Tier 2* information under Section VIII.B.6.

G. Departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses means:

(1) Changing any of the elements of the method described in the plant-specific DCD unless the results of the analysis are conservative or essentially the same; or

(2) Changing from a method described in the plant-specific DCD to another method unless that method has been approved by NRC for the intended application.

H. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in section 16.3), and the generic technical specifications in the AP600 DCD (12/99 revision) are approved for incorporation by reference by the Director of the Office of the Federal Register on January 24, 2000, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Mr. Michael Corletti, Westinghouse Electric Company, P.O. Box 355, Pittsburgh, PA 15230–0355. A copy of the generic DCD is available for examination and copying at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Copies are also available for examination at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20582; and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2 (including the investment protection short-term availability controls in section 16.3), and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information in the generic DCD and the evaluation of severe accident mitigation design alternatives in Appendix 1B of the generic DCD are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the AP600 design or NUREG–1512, ''Final Safety Evaluation Report Related to Certification of the AP600 Standard Design,'' (FSER), then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site-specific design parameters, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition

[3] AP600 is a trademark of Westinghouse Electric Company LLC.

to complying with the requirements of 10 CFR 52.207, 52.209, and 52.211, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;

2. Include, as part of its application:

a. A plant-specific DCD containing the same information and utilizing the same organization and numbering as the generic DCD for the AP600 design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by Section X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.107(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information and safeguards information referenced in the AP600 DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the AP600 design are in 10 CFR parts 20, 50, 73, and 100, codified as of December 16, 1999, that are applicable and technically relevant, as described in the FSER (NUREG–1512) and the supplementary information for this section.

B. The AP600 design is exempt from portions of the following regulations:

1. Paragraph (a)(1) of 10 CFR 50.34—whole body dose criterion;

2. Paragraph (f)(2)(iv) of 10 CFR 50.34—Plant Safety Parameter Display Console;

3. Paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Term in TID 14844;

4. Paragraph (a)(2) of 10 CFR 50.55a—ASME Boiler and Pressure Vessel Code;

5. Paragraph (c)(1) of 10 CFR 50.62—Auxiliary (or emergency) feedwater system;

6. Appendix A to 10 CFR part 50, GDC 17—Offsite Power Sources; and

7. Appendix A to 10 CFR part 50, GDC 19—whole body dose criterion.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the AP600 design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in section V of this appendix; and therefore, provide adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the AP600 design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.127(a)(4) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held pursuant to 10 CFR 52.231, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements and the investment protection short-term availability controls in section 16.3), and the rulemaking record for certification of the AP600 design;

2. All nuclear safety and safeguards issues associated with the information in proprietary and safeguards documents, referenced and in context, are intended as requirements in the generic DCD for the AP600 design;

3. All generic changes to the DCD pursuant to and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD pursuant to and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that plant;

5. All departures from the DCD that are approved by license amendment, but only for that plant;

6. Except as provided in Section VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in Section VIII.B.5 of this appendix that do not require prior NRC approval, but only for that plant;

7. All environmental issues concerning severe accident mitigation design alternatives (SAMDAs) associated with the information in the NRC's environmental assessment for the AP600 design and Appendix 1B of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the SAMDA evaluation.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.127(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary and safeguards information or other secondary references in the AP600 DCD, in order to request or participate in the hearing required by 10 CFR 52.217 or the hearing provided under 10 CFR 52.231, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from Westinghouse. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.217 or 10 CFR 52.231. If Westinghouse declines to provide the information sought, Westinghouse shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to Westinghouse), and Westinghouse's response. The Commission and presiding officer may order Westinghouse to provide access to some or all of the requested information, subject to an appropriate non-disclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from January 24, 2000, except as provided for in 10 CFR 52.119(b) and 52.121(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 Information

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.127(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through

plant-specific orders are governed by the requirements in 10 CFR 52.127(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.127(b)(1) and 52.227(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 Information

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.127(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.119 or 52.125, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if it would:

(1) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the plant-specific DCD;

(2) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a structure, system, or component (SSC) important to safety previously evaluated in the plant-specific DCD;

(3) Result in more than a minimal increase in the consequences of an accident previously evaluated in the plant-specific DCD;

(4) Result in more than a minimal increase in the consequences of a malfunction of a SSC important to safety previously evaluated in the plant-specific DCD;

(5) Create a possibility for an accident of a different type than any evaluated previously in the plant-specific DCD;

(6) Create a possibility for a malfunction of an SSC important to safety with a different result than any evaluated previously in the plant-specific DCD;

(7) Result in a design basis limit for a fission product barrier as described in the plant-specific DCD being exceeded or altered; or

(8) Result in a departure from a method of evaluation described in the plant-specific DCD used in establishing the design bases or in the safety analyses.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, requires a license amendment if:

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure requires a license amendment pursuant to paragraphs B.5.b or B.5.c of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.231(a), who believes that an applicant or licensee who references this appendix has not complied with Section VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition, to comply with the general requirements of 10 CFR 2.714(b)(2), the petition must demonstrate that the departure does not comply with Section VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.231 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of material fact regarding compliance with Section VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.127(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.231(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.

(2) ASME Boiler and Pressure Vessel Code, Section III, and Code Case N–284.

(3) Design Summary of Critical Sections.

(4) ACI 318, ACI 349, and ANSI/AISC–690.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) Instrumentation and control system design processes, methods, and standards.

(10) PRHR natural circulation test (first plant only).

(11) ADS and CMT verification tests (first three plants only).

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational Requirements

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical

specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.758(b) are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.231(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.714(b)(2) and must demonstrate why special circumstances as defined in 10 CFR 2.758(b) are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.227(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.227(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.231(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.231(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a § 52.231(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.227 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD, which reflect the generic changes to the generic DCD and the plant-specific departures made pursuant to Section VIII of this appendix. These updates must be filed in accordance with the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs B.1 and B.2 of this section must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application must include the report and any updates to the plant-specific DCD.

b. During the interval from the date of application to the date of issuance of a license, the report and any updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. During the interval from the date of issuance of a license to the date the Commission makes its findings under 10 CFR 52.231(g), the report must be submitted quarterly. Updates to the plant-specific DCD must be submitted annually.

d. After the Commission has made its finding under 10 CFR 52.231(g), reports and updates to the plant-specific DCD may be submitted annually or along with updates to the site-specific portion of the final safety analysis report for the facility at the intervals required by 10 CFR 50.71(e), or at shorter intervals as specified in the license.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

28. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

29. Section 72.210 is revised to read as follows:

§ 72.210 General license issued.

A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50 or under a combined license or duplicate design license under 10 CFR part 52.

30. In § 72.218, paragraph (b) is revised to read as follows:

§ 72.218 Termination of licenses.

* * * * *

(b) An application for termination of the reactor operating, combined, or duplicate design license submitted under § 50.82 of this chapter must contain a description of how the spent fuel stored under this general license will be removed from the reactor site.

* * * * *

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

31. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (402 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

32. In § 73.1, paragraph (b)(1)(i) is revised to read as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(1) * * *

(i) The physical protection of production and utilization facilities licensed pursuant to 10 CFR parts 50 or 52.

* * * * *

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY REQUIREMENTS

33. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

34. In § 140.2, paragraph (a)(1) is revised to read as follows:

§ 140.2 Scope.

(a) * * *

(1) To each person who is an applicant for or holder of a license issued pursuant to 10 CFR parts 50, 52, or 54 to operate a nuclear reactor, and

* * * * *

35. Section 140.10 is revised to read as follows:

§ 140.10 Scope.

This subpart applies to applicants for and holders of licenses issued pursuant to 10 CFR parts 50, 52, or 54 authorizing operation of nuclear reactors, except licenses for the conduct of educational activities issued to, or applied for, by persons found by the Commission to be nonprofit educational institutions and except persons found by the Commission to be Federal agencies. This subpart also applies to persons licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant.

36. Section 140.11 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

* * * * *

(b) In any case where a person is authorized pursuant to parts 50 or 52 of this chapter to operate two or more nuclear reactors at the same location, the total primary financial protection required of the licensee for all such reactors is the highest amount which would otherwise be required for any one of those reactors: Provided, That such primary financial protection covers all reactors at the location.

(c) A holder of a combined license issued under part 52 of this chapter must comply with paragraphs (a) and (b) of this section when the Commission authorizes operation under § 52.231(g).

37. Section 140.13 is revised to read as follows:

§ 140.13 Amount of financial protection required of certain holders of construction permits and combined licenses.

(a) Each holder of a construction permit under part 50 of this chapter authorizing construction of a nuclear reactor who is also the holder of a license under part 70 of this chapter authorizing ownership, possession, and storage only of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after issuance of an operating license under part 50 of this chapter, shall (during the period prior to issuance of the license authorizing operation of the reactor) have and maintain financial protection in the amount of $1,000,000. Proof of financial protection shall be filed with the Commission in the manner specified in § 140.15 prior to issuance of the license under part 70 of this chapter.

(b) Each holder of a combined license for a nuclear power reactor under part 52 of this chapter, who is also the holder of a license under part 70 of this chapter authorizing ownership, possession, and storage only of special nuclear material at the site of the nuclear reactor for use as fuel in operation of the nuclear reactor after authorization to operate under part 52 of this chapter, shall (during the period prior to Commission authorization to operate the reactor under § 52.231 of this chapter) have and maintain financial protection in the amount of $1,000,000. Proof of financial protection shall be filed with the Commission in the manner specified in § 140.15 prior to issuance of the license under part 70 of this chapter.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

38. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

39. In § 170.2, paragraphs (g) and (k) are revised to read as follows:

§ 170.2 Scope.

* * * * *

(g) An applicant for or holder of a production or utilization facility construction permit or operating license issued under 10 CFR part 50, or an

approval, certification, permit, or license issued under 10 CFR part 52;

* * * * *

(k) Applying for or already has applied for review, under 10 CFR part 52, of a facility site prior to the submission of an application for a construction permit;

* * * * *

Dated at Rockville, Maryland, this 24th day of June, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–16413 Filed 7–2–03; 8:45 am]

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Thursday,
July 3, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Remanded Determination of Status for the Contiguous United States Distinct Population Segment of the Canada Lynx; Clarification of Findings; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Notice of Remanded Determination of Status for the Contiguous United States Distinct Population Segment of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Clarification of findings.

SUMMARY: The Fish and Wildlife Service (Service), in response to the December 26, 2002, memorandum opinion and order of the United States District Court for the District of Columbia, in the case of *Defenders of Wildlife* v. *Norton* (Civil Action No. 00–2996 (GK)) and pursuant to the Endangered Species Act of 1973, as amended (ESA or Act), provides a clarification to the findings we made in support of the final rule that listed Canada lynx (*Lynx canadensis*) (lynx) as threatened. The lynx is currently listed as threatened in the contiguous United States as a Distinct Population Segment (DPS) that includes the States of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, Wisconsin, and Wyoming. As a result of our reanalysis of the basis for that final rule, which was directed by the Court, we find that the lynx is not endangered throughout a significant portion of its range. This finding does not affect the status of the lynx as currently set forth in 50 CFR 17.11; the lynx continues to be listed as threatened in the States listed above. This finding also does not affect the special rule pursuant to section 4(d) of the Act for the Canada lynx set forth in 50 CFR 17.40(k).

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, Montana Field Office (see **ADDRESSES**), telephone 406–449–5225; facsimile 406–449–5339.

SUPPLEMENTARY INFORMATION:

Background

The Service listed the Canada lynx, hereafter referred to as lynx, as threatened on March 24, 2000 (65 FR 16052). After listing the lynx as threatened, plaintiffs in the case of *Defenders of Wildlife* v. *Norton* (Civil Action No. 00–2996 (GK)) initiated action in Federal District Court, challenging the listing of the lynx as threatened and alleging violations of the Act and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Plaintiffs argued that the Service acted arbitrarily and capriciously when it (1) did not treat the four lynx regions as separate DPSs, (2) determined that the lack of guidance for conservation of lynx in National Forest Land and Resource Management Plans and Bureau of Land Management (BLM) Resource Area Management Plans is the single factor threatening the contiguous United States DPS of lynx, (3) did not designate critical habitat for the lynx, and (4) determined that ''[c]ollectively, the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the range of the DPS.''

On December 26, 2002, the Court issued its memorandum opinion and order, deciding that the Service's determination that ''[c]ollectively, the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the range of the DPS'' must be set aside and remanded to the Service for further consideration of the lynx's status under the ESA consistent with the Court's memorandum opinion. The Court explained that the Service's determination about the four regions was counterintuitive and contrary to the plain meaning of the ESA phrase ''significant portion of its range.'' The Court did not address the issues concerning the threats and the DPSs. The Court also ordered the Service to ''undertake prompt rulemaking'' in order to designate critical habitat for lynx, and ordered injunctive relief directed at section 7 consultation.

The Court ordered the determination concerning a ''significant portion of its range'' be remanded to the Service and completed within 180 days of the date of the order consistent with the Court's memorandum opinion. With this document, the Service is providing its consideration of this issue. This document does not address critical habitat for the lynx, since our listing budget is currently insufficient to begin work on a rule for critical habitat. The Service will seek public comment in the future when it proposes critical habitat. This document also does not address the special rule for Canada lynx established in the March 24, 2000, final listing rule. That rule, which is found in 50 CFR 17.40(k), remains in effect.

As noted above, plaintiffs contend that our determination that ''[c]ollectively, the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the range of the DPS,'' was critical to our decision not to list the lynx as endangered. Plaintiffs maintain that, if those three regions are considered collectively to be a significant portion of the DPS, ''then the Lynx's highly imperilled status in those three areas would necessitate listing of the entire DPS as endangered.'' Pls. Mot. for Summ. J. at 30 (emphasis in original). However, the Service would need to find that the lynx is endangered in these areas and that they were significant in order to list the entire DPS. Therefore, we first reviewed all of the threats to the lynx in these areas to determine whether it is in danger of extinction in each area. We identified two areas or parts of areas in which the lynx might be in danger of extinction. We then determined whether either of those areas (or parts of areas) constitutes a significant portion of the range of the lynx.

The remainder of this section describes some important concepts used throughout the following analysis. Later sections include background information on the natural history and range of the lynx, responses to public comments, an analysis of the quantity and quality of habitat throughout the range of the DPS, an analysis of the threats facing the species in the areas addressed by the remand, a finding as to the areas in which the lynx currently are in danger of extirpation, and a finding that those areas do not constitute a significant portion of the range of the lynx.

As a preliminary matter, we note that the Court suggested, but did not decide, that ''significant'' is appropriately defined in this context as ''a noticeably or measurably large amount,'' citing a dictionary definition. However, there are other definitions of significance that pertain to importance. Moreover, we believe this is more consistent with the intent of the Act in the context of the provision at issue. Otherwise, a severe threat to a small area within the range of a species would always require the species to be listed as endangered, no matter how inconsequential that area might be given the biology of the species. For example, building a large dam may make the area covered by the resulting artificial lake unsuitable for an aquatic species currently resident in the river to be dammed. The area covered by the lake would be a ''measurably large'' area, and therefore a measurably large portion of the range of the species.

However, if the species is sufficiently widespread and healthy, the area subject to the threat would not be biologically important, and we believe it was not the intent of Congress that all such circumstances lead to the listing of all affected species.

Understanding ''significant'' to mean ''important,'' the following analysis concentrates on applying our understanding of the ecology of the lynx to the geography of its habitat. This allows us to determine whether a given area is a significant portion of the range of lynx.

With the help of new information available as a result of ongoing research, we continue to improve our understanding of lynx ecology in the contiguous United States. In delineating the range of the lynx in the contiguous United States, we must take into account lynx life history requirements, population dynamics, and the natural features of the vegetation communities that make up lynx habitat. The following list summarizes fundamental elements that determine the range of the lynx in the contiguous United States. We describe these elements in further detail later in this notice.

(1) Lynx in the contiguous United States are at the southern margins of a widely-distributed lynx population whose center is in north-central Canada and Alaska. Lynx populations in the contiguous United States are sustained by cyclic influx from lynx populations in Canada.

(2) Lynx are specialized predators of snowshoe hare (*Lepus americanus*). Lynx populations track hare cycles. Abundant hares are necessary to support survival of lynx kittens and recruitment into and maintenance of the lynx population. As a result, depending on habitat quality, local lynx populations naturally may not be able to survive through a cyclic low in the hare cycle.

(3) Lynx and snowshoe hare habitat is boreal forest where there are cold winters with deep snow.

(4) In the contiguous United States, the boreal forest is at its southernmost extent, transitions into other vegetation communities, and is naturally patchy. These natural patches may not be big enough or of high enough quality to support a resident lynx population.

(5) The habitat within these patches changes over time and location, naturally becoming suitable or unsuitable for lynx with forest succession or changes in local climate conditions.

(6) Lynx disperse long distances when hare populations decline. As a result, they can colonize suitable but unoccupied habitats, augment existing resident populations, or disperse to habitats where they cannot survive.

As a result of the factors described above, the range of the lynx in the contiguous United States is comprised of areas supporting resident, breeding populations and areas supporting occasional dispersers:

(1) Resident population—Resident, breeding populations exist in areas of abundant, higher-quality habitat. These areas are ''core'' areas essential to maintaining lynx in the contiguous United States. During cyclic population lows, resident lynx populations are naturally reduced to extremely low numbers of individuals. Throughout this document, we use the term ''resident population'' to refer to a group of lynx that has exhibited long-term persistence in an area as determined by a variety of factors, such as evidence of reproduction, successful recruitment into the breeding cohort, and maintenance of home ranges.

(2) Dispersers—Lynx records in many parts of the contiguous United States are of dispersing animals. Lynx occur as dispersers where boreal forest is isolated, patchy, or of marginal quality such that it cannot sustain a resident, breeding lynx population. We include areas of the contiguous United States that contain boreal forest as potential lynx range. Although dispersing lynx may periodically occupy some of this range, there is a low probability that habitat quality and quantity are sufficient to support a breeding population. It is possible that some of the large outlying patches of boreal forest may periodically support some breeding lynx; however, evidence of this is minimal and our best information indicates that these areas are likely to contribute little to the persistence of the species in the contiguous United States.

Some dispersing lynx are found in completely unsuitable habitats, such as prairie or deciduous forest, where they are unable to survive in the long term. We do not include such areas within the range of lynx because such occurrences are unpredictable and because, to the best of our knowledge, such areas have not contained conditions capable of supporting lynx since at least the time of European settlement.

We use the word ''dispersers'' to refer to lynx that have left the area they originally occupied for various reasons, most often when snowshoe hare populations decline. To successfully disperse, lynx must find suitable habitat and a mate and must successfully reproduce (McKelvey *et al.* 2000a). Successful dispersals can result in the colonization of unoccupied habitats and contribute to the persistence of the metapopulation (as described in the next paragraph). Unsuccessful dispersal is a natural phenomenon that occurs when lynx move to habitats that are unable to sustain lynx. These individuals are unable to survive and are lost from the metapopulation. Unsuccessful dispersal is demonstrated by records of lynx in areas such as North Dakota, Nebraska, and Iowa, which cannot support lynx populations in the long term (Adams 1963; Gunderson 1978; W. Jobman, U.S. Fish and Wildlife Service, in litt. 1997).

Another word we use is ''metapopulation.'' According to McKelvey *et al.* (2000a), a metapopulation is a number of discrete subpopulations within habitat patches, connected by dispersal. Through time, subpopulations may go extinct (no longer existing or living) and be recolonized, but the larger metapopulation persists. We believe lynx in the contiguous United States are part of a larger metapopulation with lynx populations in Canada.

The range of the lynx must be considered differently from the range of other species that are less mobile and have more stable population dynamics. Because the lynx is highly mobile and has cyclic population dynamics that are tied to its primary prey, the snowshoe hare, numbers of lynx naturally fluctuate and become extremely low at times during a cycle. Additionally, where snowshoe hare populations are not adequate, resident lynx populations cannot be sustained. Because of this, resident lynx populations never occurred everywhere boreal forest existed in the contiguous United States. Where the boreal forest was naturally more patchy and marginal the habitat was incapable of supporting an adequate snowshoe hare population that in turn was able to support a resident lynx population over time. As a result, only a few areas in the contiguous United States historically supported adequate quantity and quality of habitat to support resident lynx populations over time. Many historical lynx occurrences across a large area of the contiguous United States were likely dispersers. The occurrence of dispersing lynx is unpredictable, and dispersing lynx will continue to periodically move into areas that are not lynx habitat. This historic, natural condition continues to exist today, as will be discussed in this document.

Natural History

In the following section we describe in more detail than we did in the final rule the natural history, population

dynamics, and habitat of lynx in the contiguous United States, information necessary to delineate lynx range. The lynx is a medium-sized cat with long legs; large, well-furred paws; long tufts on the ears; and a short, black-tipped tail (McCord and Cardoza 1982). The lynx's long legs and large feet make it highly adapted for hunting in deep snow.

Lynx are highly specialized predators of snowshoe hare. The North American distribution of the lynx is nearly the same as that of the snowshoe hare, both of which are strongly associated with boreal forest (Bittner and Rongstad 1982; McCord and Cardoza 1982; Quinn and Parker 1987; Agee 2000; Aubry *et al.* 2000; McKelvey *et al.* 2000b). Boreal forests are cold and moist with conifer trees, the predominant type of trees being species of spruce and fir (Elliot-Fisk 1988). Lynx habitat can be generally described as boreal forests that have cold winters with deep snow and that provide a snowshoe hare prey base (Quinn and Parker 1987, McKelvey *et al.* 2000b, Mowat *et al.* 2000). For example, in the Northeast, lynx were most likely to occur in areas with greater than 268 centimeters (cm) (105 inches (in)) of annual snowfall (Hoving 2001). Boreal forests are naturally dynamic and, therefore, are known as ''disturbance forests'' (Elliot-Fisk 1988, Agee 2000). The landscape changes over time and location as the forest undergoes natural succession following natural or human-caused disturbances such as fire, insect epidemics, wind, ice, disease, and logging. Large-scale disturbance is necessary to create the mosaic of different successional forest stages that provide suitable foraging and denning habitat for lynx. Lynx in the contiguous United States are at the southern margins of a widely distributed lynx population that is most abundant in northern Canada and Alaska.

To understand habitat relationships of lynx one must first understand the habitat relationships of snowshoe hares, their primary prey. Snowshoe hares use spruce and fir forests with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982; Monthey 1986; Hodges 2000a, 2000b). Generally, earlier successional (younger) forest stages have greater understory structure than do mature forests and, therefore, support higher hare densities (Fuller 1999, Hodges 2000a, 2000b). Lynx generally concentrate their hunting activities in areas where hare populations are high (Koehler *et al.* 1979; Parker 1981; Ward and Krebs 1985; Major 1989; Murray *et al.* 1994; O'Donoghue *et al.* 1997, 1998a). In Maine, snowshoe hare abundance and lynx occurrence are positively associated with late regeneration forests (forest stands that are growing back 12 to 30 years after being clear-cut and have greater than 50 percent canopy closure), evidence that lynx are selecting habitat primarily on the abundance of primary prey (Hoving 2001).

Lynx numbers and snowshoe hare densities in the contiguous United States generally do not get as high as in the center of their range in Canada, and there is no evidence they ever did so in the past (Hodges 2000a, 2000b; McKelvey *et al.* 2000b). It appears that northern and southern hare populations have similar cyclic dynamics but that in southern areas both peak and low densities are lower than in the north (Hodges 2000b). However, it is unclear whether hare populations cycle everywhere in the contiguous United States. Relatively low snowshoe hare densities at southern latitudes are likely a result of the naturally patchy, transitional boreal habitat at southern latitudes that prevents hare populations from achieving densities similar to those of the expansive northern boreal forest (Wolff 1980; Buehler and Keith 1982; Koehler 1990; Koehler and Aubry 1994). Additionally, the presence of more predators and competitors of hares at southern latitudes may inhibit the potential for high-density hare populations with extreme cyclic fluctuations (Wolff 1980). As a result of naturally lower snowshoe hare densities, lynx densities at the southern part of the range rarely achieve the high densities that occur in the northern boreal forest (Aubry *et al.* 2000).

The association between lynx and snowshoe hare is considered a classic predator-prey relationship (Saunders 1963; van Zyll de Jong 1966; Quinn and Parker 1987, Krebs *et al.* 2001). In northern Canada and Alaska, lynx populations fluctuate on approximately 10-year cycles that follow the cycles of hare populations (Elton and Nicholson 1942; Hodges 2000a, 2000b; McKelvey *et al.* 2000b). Generally, researchers believe that when hare populations are at their cyclic high, the interaction of predation and food supply causes hare populations to decline drastically (Buehler and Keith 1982; Krebs *et al.* 1995; O'Donoghue *et al.* 1997, Krebs *et al.* 2001). There is little evidence of regular snowshoe hare cycles in the Northeast and southern Quebec (Hoving 2001), but hare populations do fluctuate widely in this region. Hare fluctuations in this region may be more influenced by forest practices, weather, and other ecological factors. Snowshoe hare provide the quality prey necessary to support high-density lynx populations (Brand and Keith 1979). Lynx also prey opportunistically on other small mammals and birds, particularly when hare populations decline (Nellis *et al.* 1972; Brand *et al.* 1976; McCord and Cardoza 1982; O'Donoghue *et al.* 1997, 1998a). Red squirrels (*Tamiasciurus hudsonicus*) are an important alternate prey (O'Donoghue *et al.* 1997; 1998a; Apps 2000; Aubry *et al.* 2000). However, a shift to alternate food sources may not sufficiently compensate for the decrease in hares consumed to be adequate for lynx reproduction and kitten survival (Brand and Keith 1979, Koehler 1990, Koehler and Aubry 1994). When snowshoe hare densities decline, the lower quality diet causes sudden decreases in the productivity of adult female lynx and decreased survival of kittens, if any are born during this time; as a result, recruitment of young into the population nearly ceases during cyclic lows of snowshoe hare populations (Nellis *et al.* 1972; Brand *et al.* 1976; Brand and Keith 1979; Poole 1994; Slough and Mowat 1996; O'Donoghue *et al.* 1997, Mowat *et al.* 2000).

Lynx den sites are found where coarse woody debris, such as downed logs and windfalls, provides denning sites with security and thermal cover for lynx kittens (McCord and Cardoza 1982; Koehler 1990; Koehler and Brittell 1990; Slough 1999; Squires and Laurion 2000; J. Organ, U.S. Fish and Wildlife Service, in litt. 1999). The integral component for all lynx den sites appears to be the amount of downed, woody debris present, not the age of the forest stand (Mowat *et al.* 2000). In Maine, 17 den sites have been located in a variety of stand types, including 10- to 20-year-old clear-cut and adjacent residual stands (J. Organ, U.S. Fish and Wildlife Service, in litt. 1999; G. Matula, Maine Department Inland Fisheries and Wildlife in litt. 2003). Maine den sites are characterized by regenerating hardwoods and softwoods, dense understory, and abundant coarse woody debris (J. Organ, in litt. 1999, 2003). In Washington, lynx denned in lodgepole pine (*Pinus contorta*), spruce (*Picea* spp.), and subalpine fir (*Abies lasiocarpa*) forests older than 200 years with an abundance of downed woody debris (Koehler 1990). A den site in Wyoming was located in a mature subalpine fir/lodgepole pine forest with abundant downed logs and dense understory (Squires and Laurion 2000).

Lynx require very large areas containing boreal forest habitat. In the Northeast, lynx were most likely to occur in areas containing suitable

habitat that were greater than 100 square kilometers (km ^{2}) (40 square miles (mi ^{2})) (Hoving 2001). The requirement for large areas also is demonstrated by home ranges that encompass many square miles. The size of lynx home ranges varies by the animal's gender and age, abundance of prey, season, and the density of lynx populations (Hatler 1988; Koehler 1990; Poole 1994; Slough and Mowat 1996; Aubry *et al.* 2000; Mowat *et al.* 2000). Based on a limited number of studies in southern boreal forest, the average home range for males is 151 km ^{2} (58 mi ^{2}), for females it is 72 km ^{2} (28 mi ^{2}) (Aubry *et al.* 2000). Recent home range estimates from Maine are 70 km ^{2} (27 mi ^{2}) for males and 52 km ^{2} (20 mi ^{2}) for females (G. Matula, in litt. 2003). However, documented home ranges in both the southern and northern boreal forest vary widely from 8 to 800 km ^{2} (3 to 300 mi ^{2}) (Saunders 1963; Brand *et al.* 1976; Mech 1980; Parker *et al.* 1983; Koehler and Aubry 1994; Apps 2000; Mowat *et al.* 2000; Squires and Laurion 2000; Squires *et al.* 2001; G. Matula, in litt. 2003). Generally, it is believed that larger home ranges, such as have been documented in some areas in the southern extent of the species' range in the West, are a response to lower-density snowshoe hare populations (Koehler and Aubry 1994; Apps 2000; Squires and Laurion 2000).

Lynx are highly mobile and have a propensity to disperse. Long-distance movements (greater than 100 kilometers (km) (60 miles (mi))) are characteristic (Mowat *et al.* 2000). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985; Koehler and Aubry 1994; O'Donoghue *et al.* 1997; Poole 1997). Subadult lynx also disperse even when prey is abundant (Poole 1997), presumably as an innate response to establish home ranges. Lynx also make exploratory movements outside their home ranges (Squires *et al.* 2001). Lynx are capable of moving extremely long distances (greater than 500 km (300 mi)) (Mech 1977; Brainerd 1985; Washington Department of Wildlife 1993; Poole 1997; Mowat *et al.* 2000; Squires *et al.* 2001); for example, a male was documented traveling 620 km (380 mi) (Brainerd 1985). A male lynx in Wyoming made an exploratory movement of 730 km (450 mi) round trip from its home range (Squires *et al.* 2001). While it is assumed lynx would prefer to travel where there is forested cover, the literature contains many examples of lynx crossing large, unforested openings (Roe *et al.* 2000). The ability of both male and female lynx to disperse long distances, crossing unsuitable habitats, indicates they are capable of colonizing suitable habitats and finding potential mates in areas that are isolated from source lynx populations.

Range of Lynx in the Contiguous United States

Within the contiguous United States, the lynx's range coincides with that of the southern margins of the boreal forest along the Appalachian Mountains in the Northeast, the western Great Lakes and the Rocky Mountains and Cascade Mountains in the West. In these areas, the boreal forest is at its southern limits, becoming naturally fragmented into patches of varying size as it transitions into subalpine forest in the West and deciduous temperate forest in the east (Agee 2000, Wisconsin Department Natural Resources, in litt. 2003). Because the boreal forest transitions into other forest types to the south, scientists have difficulty mapping its exact boundaries (Elliot-Fisk 1988). Therefore, precisely identifying and describing the distribution of lynx habitat also is difficult because there are several vegetation and landform classifications and descriptions that have been published for various parts of North America (U.S. Forest Service and Bureau of Land Management 1999). However, the term ''boreal forest'' broadly encompasses most of the vegetative descriptions of this transitional forest type that makes up lynx habitat in the contiguous U.S. (Agee 2000).

In addition to appropriate vegetation type, delineation of the range of the lynx within the contiguous United States must consider snow conditions. Lynx are at a competitive advantage over other carnivores (*e.g.*, bobcats (*Lynx rufus*) or coyotes (*Canis latrans*)) in areas that have cold winters with deep snow because of the lynx's morphological adaptations for hunting and surviving in such environments. Therefore, lynx populations may not be able to successfully compete and persist in areas with insufficient snow even if suitable forest conditions otherwise appear to be present (Ruediger *et al.* 2000; Ruggiero *et al.* 2000b; Hoving 2001; S. Hassett, Wisconsin Department Natural Resources, in litt. 2003). A consistent winter presence of bobcats indicates such areas are not of high quality for lynx.

Lynx in the contiguous United States are part of a larger metapopulation whose center is located in the northern boreal forest of central Canada; lynx populations emanate from this area (Buskirk *et al.* 2000b; McKelvey 2000a, 2000b). It appears hare populations and, as a result, lynx populations in the southern part of the range are cyclic, although the amplitude of the fluctuations in this portion of the range is not as extreme as in the center of the range (Aubry *et al.* 2000; Hodges 2000a, 2000b; Malloy 2000; McKelvey 2000b). When there is a high in the lynx population in central Canada, it acts like a wave radiating out to the margins of the lynx range (McKelvey *et al.* 2000a, 2000b). We know from historic data that the magnitude of the lynx population high emanating from the central Canadian boreal forest varies for each cycle (McKelvey *et al.* 2000a, 2000b). This wave can be produced by local populations reacting to environmental conditions, dispersers, or a combination of these (McKelvey *et al.* 2000b). Schwartz *et al.* (2002) concluded this wave is driven by dispersers, based on findings of a high level of gene flow between lynx in Alaska, Canada, and the western United States.

Lynx populations in the northeastern United States and southeastern Canada are separated from those in north-central Canada by the St. Lawrence River. There is little evidence of regular hare or lynx population cycles in this area (Hoving 2001), but wide fluctuations in lynx and snowshoe hare populations do occur. On a smaller scale, fluctuating populations in the core of this area (Quebec's Gaspé Peninsula, western New Brunswick, and northern Maine) can potentially influence lynx distribution up to several hundred miles distant.

We believe lynx dispersing during periods of population highs will occupy many patches of boreal habitat at the periphery of their range. Some patches will be suitable to maintain a long-term population and some will not. Where the boreal forest habitat patches within the contiguous United States are large, with suitable habitat, prey, and snow conditions, resident populations of lynx are able to survive throughout the low period of the approximately 10-year cycle. Most likely the influx of lynx from populations in Canada at the high point of the cycle augments these resident populations. It is likely that some of these habitat patches within the contiguous United States are able to act as sources of lynx (where recruitment is greater than mortality) that are able to disperse and potentially colonize other patches (McKelvey *et al.* 2000a).

In other areas, the lynx that remain in an area after a cyclic population high may be so few or in naturally marginal habitat that they are not able to persist or establish local populations, although some reproduction may occur. Such

areas naturally act as ''sinks,'' where lynx mortality is greater than recruitment and lynx are lost from the overall population (McKelvey *et al.* 2000a). Sink habitats are most likely those places on the periphery of the southern boreal forest where habitat naturally becomes more patchy and more distant from larger lynx populations. We consider lynx found in these sink habitats to be dispersers but we include these areas within the range of the lynx. Changes in the habitat conditions or cyclic fluctuations in the prey populations may cause some habitat patches to change from being sinks to sources and vice versa. Through this natural process, local lynx populations in the contiguous United States may ''blink'' in and out as the metapopulation goes through the 10-year cycle. We conclude that where habitat is of high enough quality and quantity, resident lynx populations are able to become established or existing populations are augmented, aiding in their long-term persistence.

We include areas that contain boreal forest but that support only dispersers within the range of the lynx because of the possibility lynx could establish a small, local population and contribute to the persistence of the metapopulation. However, evidence of this is minimal.

An example of the cyclic population ''wave'' occurred in the 1960s and 1970s, when numerous lynx were reported in the contiguous United States far from source lynx populations. These records of dispersing lynx correlate to unprecedented cyclic lynx highs in Canada (Adams 1963; Harger 1965; Mech 1973; Gunderson 1978; Thiel 1987; McKelvey *et al.* 2000b; Mowat *et al.* 2000). These dispersers frequently were documented in areas such as Wisconsin, that are close to source populations of lynx in Canada or possibly northeastern Minnesota and that contain some boreal forest. But there also have been a number of occurrences of dispersers in unsuitable habitats far from source populations, such as North Dakota prairie (Adams 1963; Gunderson 1978; Thiel 1987; McKelvey *et al.* 2000b; Verts and Carraway 2001).

Rather than recognizing that the cyclic peaks of the early 1960s and 1970s were anomalous highs for the 20th century, as explained in the final rule, some wildlife managers expected subsequent cycles to be equally high. Managers became concerned when harvest returns in the 1980s and 1990s indicated comparatively low cycles. However, as thoroughly described in the final rule, lynx harvest returns in the 1980s and early 1990s were not unusual nor appreciably lower than those recorded prior to the 1960s.

Some maps (*e.g.*, Hall and Kelson 1959, Tanimoto and Garton 1993) incorrectly portray the range of the lynx by encompassing peripheral records from areas that are not within boreal forest or do not have cold winters with deep snow, such as prairie or deciduous forest. Such maps have led to a misperception that the historic range of the lynx in the contiguous United States was once much more extensive than ecologically possible. Records of lynx outside of southern boreal forest in peripheral habitats that are unable to support lynx represent long-distance dispersers that are lost from the metapopulation unless they return to boreal forest and contribute to the persistence of a population. These unpredictable and temporary occurrences are not included within either the historic or current range of lynx because they are well outside of lynx habitat. This includes records from Connecticut, Indiana, Iowa, Massachusetts, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, South Dakota, and Virginia (Hall and Kelson 1959; Burt 1954 in Brocke 1982; Gunderson 1978; McKelvey *et al.* 2000b; J. Belfonti, The Nature Conservancy, in litt. 1994; S. Johnson, Indiana Department of Natural Resources, in litt. 1994; P. Jones, Ohio Department of Natural Resources, in litt. 1994; South Dakota Natural Heritage Program, in litt. 1994; W. Jobman, U.S. Fish and Wildlife Service, in litt. 1997; Smithsonian Institute, in litt. 1998). In the proposed rule to list the lynx, we included Massachusetts and Pennsylvania in the historic range of the lynx but removed those areas from the range in the final rule because of better information that historically habitat in these States was not capable of supporting lynx. We consider both the historic and current range to consist of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, Wisconsin, and Wyoming because these States support some boreal forest and have more frequent records of lynx.

Previous Federal Action

The final rule that listed lynx as threatened in the contiguous United States described the history of the Service's actions concerning the listing of the lynx. That discussion is incorporated herein by reference. Since publication of the final rule and as a result of the litigation that requires us to reconsider our determination about the significant portion of the range of lynx, we reopened the comment period for 30 days to acquire information to assist us during our reconsideration (March 17, 2003, 68 FR 12611). This comment period closed on April 16, 2003.

Summary of Comments and Recommendations

As a result of the reopened comment period in March and April 2003, the Service received 118 comments and recommendations. Of these comments, 2 were from Congressional or Legislative officials, 6 were from Federal agencies; 6 from States; 2 from County Commissioners, 17 from environmental organizations, 3 from businesses, 9 from Industry Trade Associations, 1 from a University, and 70 from individuals. Some commenters provided information relevant to our determination regarding the significant portion of the range of lynx. Comments of a similar nature are grouped into general issues. These issues and our responses are discussed below.

We received numerous comments covering a broad spectrum of lynx-related issues that are not the subject of this notice or are beyond the scope of the court's remand. We are not addressing these comments in this document. These comments covered such subjects as: designation of critical habitat for lynx; the existence of various DPSs of lynx; general support for or opposition to protection of lynx under the Act; support for or opposition to lynx re-introduction efforts; classifying the lynx re-introduction in the Southern Rocky Mountains as an experimental, non-essential population; concern that the Service was prioritizing the listing and protection of charismatic mega-fauna ahead of other flora and fauna; the competency and intent of the Service; an internet retail vendor of lynx pelts; recovery planning; and streamlining section 7 consultations. In particular, we received a number of comments as to the status of the lynx throughout the U.S. DPS (*i.e.*, endangered, threatened, or neither). However, the only portion of our March 24, 2000 final listing determination that the court remanded for further consideration was our determination that ''[c]ollectively, the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the range of the DPS.'' Our finding on this limited remand is discussed below. To the extent that the information we received since the final listing determination, or that we receive in the future, causes us to reevaluate the listing of the lynx, we will issue an appropriate proposed rule when resources allow.

We conducted peer review of the proposed rule to list the contiguous United States population of lynx during the open public comment period in 1998. For this court-ordered reanalysis of the 2000 final rule listing the lynx, we did not have time to conduct additional peer review.

Issue 1: Technical information was provided based on recent research on lynx and snowshoe hares in Maine and Montana. Additional technical information on lynx populations and lynx habitat quality and quantity was provided by the State of Maine, the State of Vermont, the State of Colorado, the State of Wisconsin, the State of Wyoming, the State of Minnesota, research by the University of Maine and the University of Montana, the U.S. Forest Service, the BLM, the National Park Service, a number of environmental and industry groups, and individuals.

Response: We incorporated this information into this document.

Issue 2: Several commenters expressed support or concern for the Service's determination considering the significant portion of the range of the lynx. Specifically, commenters explained their concerns about whether or not the Northeast, Great Lakes, or the Southern Rockies constitute a significant portion of the range of the lynx.

Response: The Act defines ''endangered species'' as any species which is in danger of extinction throughout all or a significant portion of its range. A ''threatened species'' is any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The District Court found our determination that the Northeast, Great Lakes, and the Southern Rockies do not constitute a significant portion of the range of the lynx was arbitrary and capricious, and as a result of that finding, directed us to reevaluate it. Based on our reanalysis, we have determined that lynx is not in danger of extinction throughout a significant portion of its range in the contiguous United States DPS.

Issue 3: Several commenters opposed combining the Cascades in general, or specific locations within Washington, with the Northern Rocky Mountain region for our analysis.

Response: We combine the Cascades with the Northern Rocky Mountain region for our analysis and for convenience only because the issues in both regions are similar and frequently the best information available addressed both regions. The two areas are separated by the Okanogan River valley in northern Washington, which lynx can cross, although we believe most movement of lynx to be north-south within contiguous habitat with Canada and less likely that lynx would move between habitat patches within Washington. Furthermore, the Cascades alone supports the smallest amount of lynx habitat of any region within the contiguous United States. The relative size and close proximity of the lynx habitat in the Cascades to that in the Northern Rocky Mountains further supports considering both areas as one. Combining these two regions has not in any way diminished or obscured our analysis of the status of lynx or the threats to the species.

Issue 4: Several commenters suggested the Cascades, the Cascades/Northern Rocky Mountains, the Southern Rockies, the Great Lakes, and the Northeast Lynx populations should each be designated as individual DPSs. Other commenters believed the contiguous United States as a whole does not fulfill the criteria to be a DPS for lynx.

Response: Reevaluation of DPS issues is outside of the scope of the remand in this case. However, because the plaintiffs' claims regarding application of the Service's authority to list DPSs have not yet been addressed by the court, we are responding to these comments to update and elaborate on our analysis in the final rule. The Act gives us the authority to list fish, wildlife and plants by species, subspecies, or by DPS of any species of vertebrate fish or wildlife which interbreeds when mature. However, Congress directed that we use our authority to list by DPS sparingly (see Senate Report 151, 96th Congress, 1st Session). The Service and National Marine Fisheries Service DPS policy (61 FR 4721) identifies criteria that must be met for a vertebrate group to qualify as a DPS, but it does not require that we designate a DPS in all cases where a vertebrate group meets the DPS criteria. The Service lists, reclassifies, or delists at the level we believe to be most appropriate to carry out the conservation provisions of the Act.

In this document we reaffirm our determination in the final rule to list the lynx in the contiguous United States as a single DPS. There has been no new information since the final rule was published in 2000 that compels us to change our original determination. Subsequent to issuing the proposal to list the lynx in 1998, we evaluated whether any of the four regions individually fulfilled the criteria to be listed as a DPS. As described in the final rule, we recognize that within the contiguous United States the lynx occurs in four regions—the Northeast, Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades. As described elsewhere in this document, we combine the Northern Rocky Mountains and Cascades in our analysis because the two regions are only separated by the Okanogan River valley, which lynx can cross, and forest types and land ownership are similar. Furthermore, the Cascades alone support the least amount of lynx habitat of any region in the contiguous United States. In evaluating whether a region qualified as a separate DPS, we analyzed whether lynx in each region were both discrete and significant, as required by our DPS policy. We concluded that within the contiguous United States these regions are geographically isolated from each other and, therefore, are discrete. Since the final rule, we are less certain that the Southern Rocky Mountains regions were historically as isolated as described by some authors. We believe it is likely that lynx in the Southern Rocky Mountains region may have been dispersers that arrived during extremely high population cycles, as indicated by the fact that the last verified record of lynx in the region is from 1973, which correlates to an extreme cyclic population high documented throughout the contiguous United States and in Canada. As a result, our original conclusion that the Southern Rocky Mountains supported an isolated resident lynx population may not be correct, and the region should perhaps be considered connected to the Northern Rocky Mountains/Cascades region.

When evaluating the status of a potential DPS, the DPS policy requires that we evaluate the significance of the population segment in relation to the taxon. A taxon is the taxonomic group of animals to which the population belongs—in this case the species *Lynx canadensis.* The DPS policy identifies elements that may be considered in determining the discrete population segment's importance to the taxon to which it belongs. These include: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon, (2) evidence that loss of the discrete population segment would result in a significant gap in the range of a taxon, (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon, and (4) evidence that the discrete population segment differs markedly from other populations

of the species in its genetic characteristics.

Lynx canadensis has an extensive distribution in North America, existing in the boreal forest from Alaska throughout Canada from the Yukon and Northwest Territories south across the United States border and east to the Maritime Provinces and the Island of Newfoundland. Of the entire North American range of the lynx, only a small portion extends into the contiguous United States. Individually, the Northeast, Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades account for an extremely small fraction of the entire range of the taxon, the loss of which would not result in a significant gap in the range of the taxon. Within all four regions of the contiguous United States the distribution of lynx is associated with the southern extensions of the boreal forest, where the predominant vegetation in each region is spruce and fir types, although the individual species of vegetation varies. As is true throughout the range of *Lynx canadensis,* within these boreal forests in each region within the contiguous United States, the important element for lynx is forest structure that provides food and cover for snowshoe hares. Lynx cannot sustain breeding populations without an adequate snowshoe hare population. Additionally, the forest must provide cover for lynx dens. Such habitat conditions occur in each of the four regions. As a result, we determined that none of the regions individually constitute significantly unique or unusual ecological settings. The only genetic analysis of lynx populations shows that there is a high level of gene flow between lynx populations in Alaska, western Canada and the western contiguous United States (Schwartz *et al.* 2002). Genetic analysis comparing lynx populations within the contiguous United States has not been done. Finally, lynx in the different regions of the contiguous United States clearly are not the only surviving natural occurrence of lynx. Therefore, the individual regions do not fulfill the significance criteria under our DPS policy and, as a result, do not constitute separate DPSs. The DPS policy allows us to use the international boundary with Canada to delineate a discrete DPS in the contiguous United States. As described in the final rule, lynx in the contiguous United States may be considered ecologically significant because lynx habitat in the contiguous United States is a transitional type of southern boreal forest rather than the classic boreal forest of northern latitudes in Canada and Alaska, which is the center of lynx range. Within this transitional boreal forest within the contiguous United States there are core areas in Maine, Minnesota, Montana, Washington and likely Idaho that support resident, breeding lynx populations, the loss of which would result in a significant gap in the range of lynx. Therefore, we once again conclude the listable entity is the contiguous United States DPS of the lynx, consisting of the Northeast, Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades.

Issue 5: Several commenters raised concerns about threats that were beyond the control of Federal land management practices, particularly in the Northeast where much of the forested lynx habitat is primarily in private ownership.

Response: We recognize that lynx habitat occurs on non-Federal lands, particularly in the Northeast. We do not have specific information on the amount of lynx habitat on non-Federal lands nor precise information on the type of activities that occur on such lands. Non-Federal landowners are under no obligation to identify lynx habitat on their lands nor do they have to supply any information to the Service regarding these lands. We solicited information about non-Federal lands during the reopened comment period. To the extent possible, we attempted to better understand and assess the activities on non-Federal lands that could affect lynx. Our analysis is described in the ''Summary of Factors Affecting the Species'' section.

Issue 6: Several other comments noted the reduced threat on Federal lands, particularly National Forest lands, resulting from lynx habitat management plans.

Response: We agree that threats to lynx as a result of a lack of Federal land management plan guidance to conserve lynx, as identified in the final rule, have been somewhat alleviated. As described in ''Factor D,'' Conservation Agreements the U.S. Forest Service and BLM have with the Service, and the biological opinion on National Forest and BLM land management plans committed the U.S. Forest Service and BLM to use the Lynx Conservation Assessment and Strategy (LCAS) in determining the effects of actions on lynx. The U.S. Forest Service further committed to deferring any actions that both would adversely affect lynx and do not involve third parties until such time as the Forest Plans are amended to adequately conserve lynx. The ongoing adherence to the Conservation Agreements and programmatic biological opinion and use of the LCAS in assessing the impacts of Federal actions has been effective in removing most threats to the species on these Federal lands. However, amendment or revision of National Forest and BLM land management plans to conserve lynx is still the strongest mechanism needed to ensure lynx and lynx habitat are conserved on National Forest and BLM lands for the long term (see Factor D).

Issue 7: Several commenters suggested that habitat features (such as snow depth, forest composition, prey abundance, elevation, connectivity with lynx populations in Canada) that vary among regions and affect habitat quality may not exist in peripheral areas. Other commenters suggested that generalizations about western lynx populations cannot be applied to the East. Other commenters made recommendations as to how lynx habitat should or should not be defined according to certain vegetation types or descriptions.

Response: Our understanding of lynx habitat requirements is continually refined with ongoing research. We have a better understanding of the habitat conditions based on information from areas where there have been numerous records of lynx over many years and, especially, where resident, breeding populations of lynx have existed over time. Based on the best available information, the key to the presence of lynx populations is adequate snowshoe hare populations. Therefore, habitat conditions and vegetation types that support adequate densities and distribution of snowshoe hares and deep snows are what we consider to be lynx habitat. In general, lynx and snowshoe hare habitats are described as moist boreal forest types that receive deep snow and cold winters (Bittner and Rongstad 1982; McCord and Cardoza 1982; Quinn and Parker 1987; Elliot-Fisk 1988; Agee 2000; Aubry *et al.* 2000; McKelvey *et al.* 2000b; Ruediger *et al.* 2000). It is well established that lynx are highly mobile and are frequently found in marginal forest types or completely unsuitable habitats that cannot sustain lynx. The fact that individual lynx have been found in such areas does not mean that those areas can support a lynx population or should be considered or managed as ''lynx habitat'' (J. Claar *et al.*, in litt. 2001). To be considered lynx habitat, an area must have the potential to sustain a lynx population over a period of time, which includes supporting the appropriate vegetation composition and structure to support adequate snowshoe hare densities and deep snow where lynx are at a competitive advantage. We recognize

that the specific vegetation composition of the boreal forest type varies among the regions. Additionally, we recognize that boreal forest types on the periphery of the boreal forest range are found in smaller patches and are only marginally able to support adequate snowshoe hare populations. We conclude records of lynx in these marginal areas or in other areas without lynx habitat are of dispersers. Although there is no evidence that such habitats are able to sustain a resident lynx population, we include all areas with lynx occurrences and lynx habitat, however marginal, within the range of lynx.

Issue 8: One comment suggested lynx historically inhabited the Black Hills of South Dakota as a permanent resident. Another comment suggested northern mountain ranges in New Mexico should be included within the range of lynx.

Response: The scientific literature definitively demonstrates that lynx are specialist predators of snowshoe hares and do not successfully reproduce without an adequate diet of snowshoe hares (Brand and Keith 1979). Snowshoe hares are not indigenous to South Dakota (American Society of Mammalogists Web site). Therefore, we conclude South Dakota naturally could not support a lynx population. We recognize that dispersing lynx have occurred in unsuitable habitats such as in South Dakota; however, we do not include areas of unsuitable habitat within the range of lynx. We do not include New Mexico within the range of lynx because we have no reliable records of native lynx occurring in New Mexico. Lynx are not included on the list of Mammals of New Mexico (American Society of Mammalogists Web site). We do not consider lynx recently released into Colorado that strayed into New Mexico as sufficient reason to include New Mexico within the range of native lynx because there is no evidence habitat in New Mexico historically supported lynx.

Issue 9: A number of comments reported lynx sightings or lynx tracks in New York, New Hampshire, Washington, and Wyoming.

Response: Because lynx are difficult to identify and are often confused with bobcats, we must consider the majority of these reports anecdotal. Nonetheless, because of the existence of reliable lynx records from these States, in addition to the presence of lynx habitat, we include all these States within the range of lynx.

Issue 10: Some comments voiced concern that evidence of lynx in some areas was a result of a survey that was subsequently found to have been contaminated.

Response: In this reanalysis of the basis for our final rule, we did not use any information from that particular survey, the results of which have been rescinded by the author because of the contamination of samples. The majority of the evidence of lynx in the contiguous United States is from trapping records, research, and sightings or track surveys by qualified individuals. Results of positive identification of lynx by DNA acquired during the National Lynx Survey (K. McKelvey, Rocky Mountain Research Station, in litt. 2003) provide additional evidence of lynx. The integrity of the National Lynx Survey has been maintained because of the survey method, DNA analyses, and measures used to ensure quality and reliability.

Issue 11: We received a number of comments suggesting that certain land use activities, particularly timber management practices, adversely impact lynx habitat and are incompatible with lynx survival. Alternatively, one comment suggested that pre-commercial thinning can be compatible with objectives for high-quality lynx habitat.

Response: Timber harvesting can be beneficial, benign, or detrimental to lynx depending on harvest methods, spatial and temporal specifications, and the inherent vegetation potential of the site. Forest practices in lynx habitat that result in or retain a dense understory provide good snowshoe hare habitat that in turn provides good foraging habitat for lynx. In Maine, extensive clear cutting over the past 25 years has resulted in a large amount of the forest currently in a stage of regeneration that is optimal for snowshoe hares and lynx. However, research in Maine has shown that snowshoe hare densities are low in forest stands that have been partially harvested such that there is little understory to provide snowshoe hare habitat. The effects of forest practices on lynx are described and analyzed under Factor A.

Issue 12: Several comments raised concerns about the impacts of various activities on lynx habitat. Activities identified by commenters include roads and trails; agricultural and urban development; off-road-vehicle and snowmobile use; ski resort expansion; mining; fire suppression; and grazing.

Response: We address the potential threats to lynx under the ''Summary of Factors Affecting the Species'' section. As a result of our analysis, we found the threat to lynx by some of these activities, such as fire suppression, is low. We found no evidence that some activities, such as forest roads, pose a threat to lynx. Some of the activities suggested, such as mining and grazing, were not specifically addressed because we have no information to indicate they pose threats to lynx.

In considering threats to lynx, one must consider that lynx have evolved to adapt to an ever-changing boreal forest and require a mosaic within the boreal forest of appropriate species composition, varying stand ages, and structure to support abundant snowshoe hares and lynx denning habitat. Additionally, one must consider scale. Lynx are highly mobile, moving long distances to find abundant prey, and use a large area on a landscape as demonstrated by the large size of an average lynx home range. To significantly impact a local lynx population, an activity would likely have to occur across a very large area (presumably at least the size of several home ranges), create a homogeneous forest that does not provide the various stand ages, species composition, and structure that are good snowshoe hare and lynx habitat, or result in a barrier that effectively precludes dispersal (see Summary of Factors Affecting the Species section).

Issue 13: One comment suggested that climate change posed a threat to southern lynx populations.

Response: This comment is based on a model that predicted that if average annual snow depths decrease for a long period of time in the Northeast, appropriate lynx habitat would be diminished and could be completely eliminated if appropriate climate conditions did not return, as the author theorized could happen as a result of global warming (Hoving 2001). We conclude the potential for long-term reductions in snow depth because of climate change is speculative at this time and is not a threat to lynx within the foreseeable future (see Factor E).

Issue 14: One comment suggested a State-sanctioned coyote snaring program threatens the lynx population in Maine.

Response: As addressed under Factor D, we recognize that legal trapping, snaring, and hunting for bobcat, coyote, wolverine, and other furbearers create a potential for incidental capture or shooting of lynx. We acknowledge that no reliable recordkeeping exists to determine how frequently such take occurs. Mortality of captured individuals likely has differing impacts on the ability of local populations to persist, depending on the size of the local population and when the take occurs in the population cycle. Lynx still persist throughout their range despite the fact that incidental catch occurred historically, in all likelihood at higher levels than presently occur. Although we are concerned about the

mortality of lynx that are incidentally captured, we have no information to indicate that the loss of these individuals negatively affects the overall ability of lynx populations to persist.

Introduction to Remand Analysis

In the final rule, we found that ''[c]ollectively, the Northeast, Great Lakes and Southern Rockies do not constitute a significant portion of the range of the DPS.'' The following reanalysis of that finding is based on the administrative record, information obtained by the Service during the comment period opened to address the issues on remand, and the Court's opinion in the litigation. As discussed above, we address first whether there were any areas in the range of the lynx outside of the Northern Rockies in which the lynx is in danger of extirpation. Our analysis of whether extirpation will occur is based on the five factors listed in section 4(a)(1) of the Act. For any such areas, we then determine whether they constitute a significant portion of the range of the lynx, based largely on the quantity and quality of the habitat in the portion of the range in question.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Canada lynx (*Lynx canadensis*) were discussed in the final rule. Highlighted below are the key points raised in the final rule and the conclusions we made about whether certain activities or conditions threaten Canada lynx to the extent that those points are relevant to the three areas at issue in this remand. If new information changes a statement or conclusion made in the final rule, this point will be made in this analysis. Also discussed below is any new information we received about the five listing factors and their application to lynx during the reopened comment period initiated as a result of the remanded decision. Finally, in this document, we assess the magnitude of the threats to lynx to assist us in determining the status of the species in the areas at issue.

In considering threats to lynx and whether those threats are low, medium, or high, one must consider that lynx have evolved to adapt to an ever-changing boreal forest and require a mosaic within the boreal forest of appropriate species composition, varying stand ages, and structure to support abundant snowshoe hares and lynx denning habitat. Additionally, one must consider scale. Lynx are naturally highly mobile, moving long distances to find abundant prey, and use a large area on a landscape; the average home range for a male lynx is 151 km^2 (58 mi^2) (Aubry *et al.* 2000). In order to affect the suitability of lynx habitat and, in particular, a local lynx population to the extent of putting the population at risk of extinction, an activity would likely have to occur across a very large area (at a minimum the size of several home ranges) and (1) cumulatively result in the conversion of lynx habitat into non-lynx habitat, (2) result in a homogeneous forest that does not provide the various stand ages, species composition, and structure that are good snowshoe hare and lynx habitat, or (3) effectively preclude dispersal.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat Quantity and Quality

In assessing habitat quality for lynx, we examine a variety of elements, such as primary prey (snowshoe hare) abundance, forest type, forest structure, snow conditions, denning habitat, inherent habitat patchiness, and connectivity with larger lynx populations and habitat in Canada. We use lynx reproduction and recruitment into the population as additional indicators of habitat quality.

In the following discussions, we describe available information on lynx occurrence, habitat quantity, habitat quality, and other elements that frame our understanding of lynx in the contiguous United States. The complexities of lynx population dynamics and our incomplete understanding of the limited lynx occurrence data, combined with a naturally dynamic and transitional habitat, make it difficult to precisely delineate the historic or current extent of the range of lynx in the contiguous United States. While recognizing these limitations, we use our best professional judgement of the best scientific and commercial data available to make conclusions about the range of the lynx for the purposes of this remand.

Important to understanding the range of lynx in the contiguous United States is the status of the lynx in any given area as a member of a resident, breeding population or as a disperser. While we recognize and agree with McKelvey *et al.*'s (2000b) caution that lynx occurrence data are too incomplete to infer much beyond simple occurrence, for the purposes of this reevaluation, we feel it necessary to make conclusions about the condition of lynx using our professional assessment of the best scientific and commercial data available. We partially base our conclusions regarding whether lynx in a particular area are resident or dispersers on the record of reliable reports of lynx. We discuss the reliability of records below.

Historic lynx data in the contiguous United States are scarce and exist primarily in the form of trapping records. Many States did not differentiate between bobcats and lynx in trapping records. Therefore, long-term lynx trapping data are not available for most States. Long-term trapping data have been used to understand population trends for various species; however, because trapper effort can change across years, trapping returns may not accurately reflect population trends. Data showing few lynx trapped may be the result of low pelt prices or reduced trapper effort, not necessarily a decreased population. However, despite these difficulties, trapping data are the best information available on historic lynx presence throughout much of its range in the contiguous United States.

In the past, surveys designed specifically for lynx were rarely conducted, and many reports (*e.g.*, visual observations, snow tracks) of lynx were collected incidental to other activities. The reliability of many of these records is unknown. Trapping records may have errors, track identification is extremely difficult, and observations may be wrong because lynx look very similar to bobcat. Data from recent research in Maine and Montana (Hoving 2001; Squires and Ruggiero 2001; Squires *et al.* 2001; Squires *et al.* 2002; Homyack 2003; Maine Department of Inland Fisheries and Wildlife 2003; G. Matula, in litt. 2003; L.S. Mills and P. Griffin, in litt. 2003); recent confirmed records of lynx in Minnesota (Minnesota Department Natural Resources, in litt. 2003); results from the National Lynx Survey (K. McKelvey, Rocky Mountain Research Station, in litt. 2003); and mapping of lynx habitat on Federal lands (E. Johnston, U.S. Forest Service, in litt. 2003; J. Whitney, Bureau of Land Management, in litt. 2003) provide some of the best current information for our analysis.

Numerous reliable lynx records over a period of years (particularly across a cyclic population low) and reliable evidence of reproduction are considered strong evidence of a resident

population. For example, Washington has had numerous verified lynx records since the 1800s (McKelvey *et al.* 2000b). These records exist in the form of museum specimens (78 specimens), snow tracks, radio-collared study animals, harvest records, remote-camera photographs, and DNA samples. During the period that lynx harvest data were kept (1961–1990) the annual harvest ranged from highs of 39 and 31 animals to lows of 0 in some years. Finally, lynx reproduction has been and continues to be documented numerous times in Washington. As a result of this information, we conclude that Washington has a resident lynx population.

Few and sporadic records, many of which correlate to timeframes when there were cyclic population highs, and no evidence of reproduction are considered evidence of dispersers, rather than resident populations. For example, in Wisconsin only 11 verified records exist from 1870–1961 (McKelvey *et al.* 2000b). There are 16 verified records of lynx from the early 1960s and 1970s that correspond to the extreme cyclic population highs of that period, exceeding the number known for the previous century. Two records from 1992 are the only verified records in the State since the early 1970s, and also correspond to the time period for a cyclic population high. Lynx reproduction has never been documented in Wisconsin. We conclude that Wisconsin has never had a resident lynx population but rather occasional dispersers. We still consider Wisconsin to be in the range of lynx, as discussed in more detail below.

The range of the lynx in the contiguous United States is broadly delineated by the distribution of the southern extensions of boreal forest, which occur in: (1) The Northeast (portions of Maine, New Hampshire, Vermont, New York); (2) the western Great Lakes (portions of Minnesota, Wisconsin, Michigan); (3) the Northern Rocky Mountains/Cascades (portions of Washington, Oregon, Idaho, Montana, northwestern Wyoming, Utah); and (4) the Southern Rocky Mountains (portions of Colorado, southeastern Wyoming) (Agee 2000, Aubry 2000, McKelvey *et al.* 2000). Differences in local climate, primarily precipitation, and effects of elevation have resulted in boreal forest vegetation that differs in the western regions compared to the east (Buskirk *et al.* 2000b); however, spruce and fir are the predominant tree species in both the east and west. Within the borders of the contiguous United States, these regions are separated from each other by vegetation types that do not support lynx (*e.g.*, prairie, deciduous forest). With the exception of the Southern Rocky Mountain region, each of the regions where lynx are found in the contiguous United States are directly connected to lynx populations in Canada.

As described above, maps that accurately display the distribution of boreal forest (and therefore lynx habitat) are not readily available across the contiguous United States The only attempt to portray the range of lynx across the contiguous United States with some degree of precision is that of McKelvey *et al.* (2000b). McKelvey *et al.* (2000b) overlayed lynx occurrence records across the contiguous United States with broad vegetation classifications and topography to determine which vegetative cover types and elevations contain most of the lynx occurrences. In the East (Northeast and Great Lakes), Bailey's (1998) ecoregion classification was used to describe vegetation at the broader scale and in the West (Northern Rocky Mountains/ Cascades and Southern Rocky Mountains) Küchler's (1964) classification was used (McKelvey *et al.* 2000b). Broad-scale vegetative mapping at a continental scale, such as Bailey (1998) or Küchler (1964), results in generalized descriptions that are expected to have some inconsistencies with vegetation maps at a finer scale (T.B. Wigley, National Council on Air and Stream Improvement, Inc., in litt. 2003). However, these broad-scale maps are useful in generally delimiting and describing vegetation types. McKelvey *et al.* (2000b) put some outer bounds on what can reasonably be delineated as the range of lynx. In this analysis, we rely on McKelvey *et al.* (2000b) as our starting point in more precisely defining the range of the lynx.

In the following we summarize key information from the final rule, new information available since the final rule, and the best scientific information provided during the recent comment period to arrive at our analysis of the range of the lynx.

The amount of boreal forest habitat in the contiguous United States has not changed substantially in the past 100 years. In some local areas there has been encroachment by human development but for the most part these habitats are predominantly still forested. In these forests the changes primarily have been the natural and human-caused disturbance processes (fire, insect infestations, wind, ice, timber harvesting) that alter the successional patterns and, sometimes dominant tree species, within a forest.

In the western United States, boreal forests are located at higher elevations and are predominantly under Federal ownership (U.S. Geological Survey 1998). As a consequence, in the west (Northern Rocky Mountains/Cascades and Southern Rocky Mountains) lynx habitat occurs primarily on a Federally-owned land base. The proportion of Federal land base decreases as one progresses eastward. However, in the Great Lakes region most of the lynx records are from northeast Minnesota where the majority of the boreal forest is federally-owned (Minnesota Department Natural Resources in litt. 2003). In the Northeast, nearly all the lynx habitat is privately-owned, most of which is commercial forest in Maine.

Unfortunately, accurate estimates of the amount of lynx habitat on all land ownerships are not available for all regions. In most cases, private landowners have not mapped lynx habitat on their lands, and private landowners have not shared information about their lands with the Service. In the final rule, we cited estimates of the amount of lynx habitat on all ownerships based on coarse maps of vegetation types provided in a biological assessment (U.S. Forest Service and Bureau of Land Management 1999). We recognized that these calculations overestimated the amount of lynx habitat in many areas and possibly underestimated it in other areas, but they provided a perspective on the amount of lynx habitat overall and in the individual regions (T.B. Wigley, in litt. 2003). The biological assessment estimates the following area of lynx habitat: Northeast—65,337 km^2 (25,227 mi^2); Great Lakes—96,247 km^2 (37,161 mi^2); Southern Rockies—26,673 km^2 (10,298 mi^2); Northern Rockies—138,929 km^2 (53,641 mi^2); Cascades—16,964 km^2 (6,550 mi^2) (U.S. Forest Service and Bureau of Land Management 1999). (These calculations were cited in the final rule but were presented as acres, which we have converted into square kilometers and square miles for this rule.) During the most recent public comment period we were provided approximate estimates of the amount of lynx habitat currently mapped on U.S. Forest Service, BLM, and some National Park Service lands (S. Gniadek, National Park Service, in litt. 2003; E. Johnston, USDA Forest Service, in litt. 2003; J. Whitney, BLM, in litt. 2003). This information also is included in Table 1. These estimates for Federal lands will continue to be refined to reflect data obtained through site-specific analysis, field verification, and new information from research that

allows a better understanding and description of lynx habitat (E. Johnston, in litt. 2003). Finally, rough estimates of the amount of lynx habitat on all ownerships in the Northeast based on models of the probability of lynx occurrence also are included in Table 1 (Hoving 2001, Hoving, University of Maine, pers. comm. 2003).

TABLE 1.—ESTIMATES OF LYNX HABITAT [1] WITHIN THE CONTIGUOUS UNITED STATES USED BY THE FISH AND WILDLIFE SERVICE IN THIS ANALYSIS

Land ownership	Northeast	Great Lakes	Southern Rockies	Northern Rockies/Cascades
Federal Lands				
U.S. Forest Service [2]	2,104 km [2] (813 mi [2])	17,685 km [2] (6,828 mi [2]).	30,311 km [2] (11,703 mi [2]).	N. Rockies: 89,841 km [2] (34,688 mi [2]) Cascades: 5,949 km [2] (2,297 mi [2]).
Bureau of Land Management [3].	No BLM lands	No BLM lands	716 km [2] (277 mi [2])	1,236 km [2] (477 mi [2]).
National Park Service [4].	No NPS lands	Not available	Not available	Yellowstone: 2,784 km [2] (1,075 mi [2]) Glacier: 1,103 km [2] (426 mi [2]).
Non-Federal Lands				
	Not available	Not available	Not available	Not available.
All Ownerships Combined				
Hoving, pers. comm. 2003 [5].	13,511 km [2] (5,217 mi [2]) Maine: 12,300 km [2] (4,700 mi [2]) New Hampshire: 1,000 km [2] (400 mi [2]) Vermont: 12 km [2] (4 mi [2]) New York: 190 km [2] (73 mi [2])	Not included in study	Not included in study	Not included in study.

[1] Each of these estimates is qualified (*e.g.*, Yellowstone is likely an overestimate because vegetation mapping has not been refined; therefore, this estimate broadly includes all areas of potential habitat).
[2] E. Johnston (in litt. 2003).
[3] BLM acreages provided by management unit (J. Whitney, BLM, in litt. 2003); therefore, Northern Rocky Mountains and Cascades are not individually identified. BLM acreages not available for Wyoming.
[4] Not all NPS units provided lynx habitat estimates. Acreages from Murphy *et al.* (2003) and S. Gniadek (in litt. 2003).
[5] Fifty percent or greater probability of lynx occurrence in this area based on Hoving (2001).

Northeast

Northeastern United States lynx and snowshoe hare habitat and populations are directly contiguous with those of Canada, south of the St. Lawrence River, in southeastern Quebec and western New Brunswick. Movement of lynx across the St. Lawrence River between populations in northern Quebec and those south of the St. Lawrence is believed to occur infrequently (R. Lafond, Quebec Ministry of the Environment, pers. comm. 1999). However, a substantial lynx population resides south of the St. Lawrence River on Quebec's Gaspé Peninsula, where lynx densities are estimated to be 10 lynx per 100 km^2 (26 per 100 mi^2) during periods of high hare populations (C. Fortin, unpubl. data, in Ray *et al.* 2002). Lynx probably encounter little difficulty moving between southeastern Quebec and northern Maine because habitat is continuous.

Based on an analysis of cover types containing most of the lynx occurrences, McKelvey *et al.* (2000b) determined that, at the broad scale, most lynx occurrence records in the Northeast were found within the broadly described ''Mixed Forest-Coniferous Forest-Tundra'' cover type. This habitat type occurs along the northern Appalachian Mountain range from southeastern Quebec, western New Brunswick, and western Maine, south through northern New Hampshire. This habitat type becomes naturally fragmented and begins to diminish to the south and west, with a disjunct segment running north-south through Vermont, and a patch of habitat in the Adirondacks of northern New York (McKelvey *et al.* 2000b).

Hoving (2001) modeled lynx habitat across all ownerships for the Northeast region, including Canada south of the St. Lawrence River. Hoving (2001) found that lynx are most likely to occur in areas with deep snow (greater than 268 cm (105 in) mean annual snowfall) and relatively little deciduous cover. Based on this model, potential lynx habitat is concentrated on Quebec's Gaspé Peninsula and northwestern New Brunswick extending into northern Maine. The majority of lynx habitat in this region is found in Canada; only sixteen percent of this area is in the United States. Based on this analysis, there is little lynx habitat in the northeastern United States outside of Maine (Hoving 2001). In the United States, the amount of potential lynx habitat where there is a 50 percent or greater probability of lynx occurrence in this region is roughly 13,501 km^2 (5,177 mi^2) (Table 1) (C. Hoving, University of Maine, pers. comm. 2003). Maine has approximately 12,300 km^2 (4,700 mi^2) of potential lynx habitat, New Hampshire has 1,000 km^2 (400 mi^2), Vermont has 11 km^2 (4 mi^2), and New York has 190 km^2 (73 mi^2) (C. Hoving, pers. comm. 2003).

Maine-Lynx have been documented in Maine since the 1800s, although accounts are irregular and anecdotal for some time periods (Hoving 2001; R. Joseph, U.S. Fish and Wildlife Service, in litt. 1999). Lynx occurrences have been fairly consistent since the 1950s (Hoving 2001; R. Joseph, in litt. 1999). Historical accounts provide evidence of the reproduction and persistence of lynx in several northern and western townships (Hoving 2001; R. Joseph, in litt. 1999). Since 1999, intensive lynx research in northern Maine has resulted in 30 different lynx radio-collared, and

17 litters with 37 kittens, documented in the 300-km² (100-mi²) study area (Maine Department of Inland Fisheries and Wildlife 2003; G. Matula, in litt. 2003), demonstrating the current existence of a resident population.

Lynx habitat in Maine is considered to be of high quality at this time. The quantity of boreal forest that can potentially support lynx in Maine has not changed substantially in the past 100 years (G. Matula, in litt. 2003). Extensive clear cutting to salvage diseased trees in the 1970s and 1980s resulted in large amounts of the forest presently in a stage of regeneration that is optimal for snowshoe hares (Hoving 2001; Homyack 2003, Krohn 2003; G. Matula, in litt. 2003). Snowshoe hare densities are high (1.6–2.4 hares per hectare (ha) (4.0–5.9 per acre (ac))) in these regenerating stands (Homyack 2003; G. Matula, in litt. 2003). As a result, lynx numbers have increased in response to improved habitat conditions and increased snowshoe hare populations. In a 300-km² (100-mi²) study area in northern Maine, the preliminary estimate of lynx density in fall 2002 was 4.4 lynx per 100 km² (11.4 per 100 mi²) (G. Matula, in litt. 2003). Based on preliminary analyses, lynx home ranges in this study area average 52 km² (20 mi²) for females and 70 km² (27 mi²) for males (G. Matula, in litt. 2003); these relatively small home ranges are likely an indication of high habitat quality with abundant snowshoe hares. Coincidentally, these optimal habitat conditions occur during a period when hares and lynx should be at a cyclic high, although evidence of hare population cycles are less clear in this region. Maine's lynx numbers are expected to fluctuate in concert with hare population fluctuations.

New Hampshire—Although habitat in New Hampshire is contiguous with that in Maine, the amount of current or historical lynx habitat in New Hampshire is much less than in Maine. Recent modeling predicted approximately 1,000 km² (400 mi²) (Hoving 2001; C. Hoving, pers. comm. 2003). Most of the lynx records are from harvest that occurred in the 1930s, ranging from 1 to 20 per year (Brocke *et al.* 1993, McKelvey *et al.* 2000b). Between 1940 and 1964, lynx harvests were lower, ranging from 0 to 3 lynx trapped per year. For 11 of these 24 years, the harvest was zero (McKelvey *et al.* 2000b). The trapping season was closed in 1964 in response to apparent declines in lynx abundance reflected in harvest returns (Siegler 1971; Silver 1974; Litvaitis *et al.* 1991). Since the 1960s, reports of lynx in New Hampshire have been rare; only two reports exist from the 1990s (M. Amaral, U.S. Fish and Wildlife Service, in litt. 1999). Although there are no records of lynx breeding in New Hampshire, based on regular harvest reports from the past and connectivity with habitats in Maine where resident lynx occur, we believe that a small resident lynx population historically occurred in New Hampshire but no longer exists. However, dispersers likely still occur in New Hampshire because of its connectivity with Maine; lynx have recently been documented in Maine near the New Hampshire border (M. McCollough, pers. comm. 2003).

Vermont—Little boreal forest exists currently or historically in Vermont and what habitat exists is isolated from that in New Hampshire (W. Laroche, Vermont Department of Fish and Wildlife, in litt. 2003). Only four verified records of lynx exist for Vermont (McKelvey *et al.* 2000b; W. Laroche, in litt. 2003). There is no evidence lynx reproduction ever occurred in Vermont. In the Green Mountain National Forest, all potential lynx habitat occurs in small patches that are not large enough to support a lynx; bobcats are present throughout these areas (P. Brewster, Green Mountain and Finger Lakes National Forests, in litt. 2000), evidence that these areas are not suitable for lynx. Hoving's (2001) model predicts only approximately 11 km² (4 mi²) of potential lynx habitat in Vermont (C. Hoving, pers. comm. 2003). Based upon the limited amount and dispersed nature of suitable habitat, we conclude lynx have occurred in Vermont as dispersers that have never established resident populations. It is still possible for lynx to disperse to Vermont.

New York—An ''island'' of boreal forest exists both historically and currently in the Adirondack Mountains of New York. A resident lynx population reportedly occurred in the northern region of New York, particularly in the Adirondack Mountains, but it was considered extirpated by 1900 (Brocke 1982, McKelvey *et al.* 2000b). However, there are 23 verified lynx occurrences since 1900, primarily from the Adirondack Mountains (McKelvey *et al.* 2000b). The most recent verified record was from 1973 (McKelvey *et al.* 2000b), which correlates to an extreme cyclic population high. Habitat and prey conditions were deemed suitable for a lynx reintroduction in 1989–1991 (Brocke 1982). The reintroduction was unsuccessful in establishing a population. Hoving's 2001 model predicted approximately 190 km² (73 mi²) of potential lynx habitat in New York (C. Hoving, pers. comm. 2003), an area only slightly larger than the average home range of a single male lynx. The boreal forest in New York is protected as Adirondack State Park and much of the forest is mature without the understory necessary to support a snowshoe hare population capable of sustaining lynx (G. Batcheller, New York State Division of Fish, Wildlife and Marine Resources, pers. comm. 2003). It appears habitat quality is marginal. We conclude that a resident population may have existed in New York prior to 1900; however, records of lynx since 1900 are of dispersers.

Northeast Summary—As it did historically, the boreal forest of the Northeast continues to exist primarily in Maine where habitat is currently optimal and a resident, breeding population of lynx continues to exist. Maine's lynx population is currently much larger than we knew at the time of the final rule in 2000 and habitat is directly connected to substantive lynx populations and habitat in southeastern Quebec and New Brunswick. The potential exists for lynx to occur in New Hampshire because of its direct connectivity with Maine and we presume they currently occur there. Lynx in Vermont have always existed solely as dispersers. Lynx occurring in New York since 1900 have been dispersers.

Great Lakes

At the time of the final listing rule for lynx, the coarse-scale vegetation description, ''mixed deciduous-coniferous forest'' was used to characterize potential lynx habitat in the Great Lakes Region because it encompassed 88 percent of lynx occurrence records in this region (McKelvey *et al.* 2000b). As mapped (Bailey 1998, McKelvey *et al.* 2000b), the mixed deciduous-coniferous forest covers an extensive area in the western Great Lakes region, primarily in northeastern Minnesota, northern Wisconsin, and the western portion of Michigan's upper peninsula, giving the appearance of a large expanse of continuous boreal forest and creating the expectation of resident lynx populations throughout this large area.

However, this broad vegetation description encompasses large areas that are not lynx habitat, particularly in Wisconsin (Wisconsin Department Natural Resources, in litt. 2003). As can be seen in maps of Early Settlement Vegetation, historically spruce and fir (the predominant type of trees in the boreal forest) were most abundant in northeastern Minnesota, which is contiguous with boreal forest in Ontario,

Canada, whereas in Michigan and especially Wisconsin, spruce and fir were limited to scattered patches (Great Lakes Ecological Assessment no date, Mladenoff no date, Wisconsin Department Natural Resources, in litt. 2003). Therefore, within the Great Lakes region, potential lynx habitat has always been most abundant in northeastern Minnesota.

An accurate estimate of the amount of potential lynx habitat for all ownerships in the Great Lakes region was not available to us. The majority of potential lynx habitat in this region is in northeastern Minnesota under Federal ownership, although we cannot say precisely how much because we do not have acreages of lynx habitat on non-Federal lands. In the Great Lakes region, as currently mapped there are approximately 18,000 km ^{2} (7,000 mi ^{2}) of potential lynx habitat on National Forest lands (Table 1). This estimate includes National Forest lands in Minnesota and Michigan's Upper Peninsula. There is no potential lynx habitat on National Forest lands in Wisconsin (Weiland 2002).

Minnesota—As was true historically, northeastern Minnesota continues to support a substantial amount of transitional boreal forest (roughly estimated at 12,500 km ^{2} (4,800 mi ^{2})) in a more evenly distributed pattern rather than in small patches (Great Lakes Ecological Assessment no date, Wisconsin Department Natural Resources, in litt. 2003). In Minnesota, the deepest snows occur in the northeast corner of the State (Minnesota Department Natural Resources in litt. 1998). Most of northeastern Minnesota is under Federal ownership, primarily in the Superior National Forest (Minnesota Department Natural Resources, in litt. 2003).

Minnesota provides a good example of the problems in assessing the status of lynx because of the complexity of lynx cycles and the difficulty in interpreting historical lynx occurrence data. As a result, scientists have debated whether lynx in Minnesota are members of a long-term resident population or dispersers from Canada that do not establish a resident population in the State (McKelvey *et al.* 2000b; R. Sando, Minnesota Department of Natural Resources, in litt. 1998). Minnesota has a substantial number of historic lynx reports, primarily trapping records (McKelvey *et al.* 2000b), as expected because of the direct connectivity of the boreal forest in northeastern Minnesota with that of Ontario, Canada, where lynx occur. Harvest and bounty records for Minnesota are available since 1930. Approximate 10-year cycles are apparent in the data, with highs in the lynx cycle in 1940, 1952, 1962, and 1973 (Henderson 1978; McKelvey *et al.* 2000b). During a 47-year period (1930–1976), the Minnesota lynx harvest was substantial, ranging from 0 to 400 per year (Henderson 1978). These harvest returns for Minnesota are believed to be driven by immigration from Canada (Henderson 1978; Mech 1980; McKelvey *et al.* 2000b; M. DonCarlos, Minnesota Department of Natural Resources in litt. 1994). Outside of harvest data, 76 additional verified lynx records exist for Minnesota before 2001 (McKelvey *et al.* 2000b).

Reproduction and maintenance of home ranges by lynx were documented in the early 1970s (Mech 1973, 1980), potential evidence of the presence of a resident population. But this may have been an artifact of the early 1970s being a period of an extreme peak in the population cycle in Canada. Records of lynx in Minnesota have been rare in the past 2 decades; there were only 3 verified records of lynx in Minnesota in the 1990s (M. DonCarlos, in litt. 1994).

Individuals knowledgeable about lynx and snowshoe hares suggest that fires and logging created early successional forests that were conducive to abundant hare populations in northern Minnesota in the first half of the 20th century (S. Loch, in litt. 2003), resulting in the high numbers of lynx recorded during that time. In contrast, snowshoe hare numbers were exceptionally low in the 1980s through the 1990s (S. Loch, in litt. 2003), likely explaining the scarcity of lynx. Based on surveys in northern Minnesota, snowshoe hare numbers are currently high (J. Erb, Minnesota Department of Natural Resources, in litt. 2003).

In the past 3 years there have been 62 verified reports of lynx in northeastern Minnesota, 6 of which provided evidence of reproduction (usually visual observations of kittens accompanying an adult) (Minnesota Department of Natural Resources, in litt. 2003; S. Loch, in litt. 2003); it is assumed some of these reports are of the same animal or family group so the actual number of animals is likely lower. This dramatic increase in reports corresponds with a cyclic population high directly adjacent in Ontario (S. Loch, in litt. 2003). Research has been initiated that will help determine whether these animals are members of an established resident population in Minnesota or if these animals fail to persist when the cyclic population high recedes (University of Minnesota, in litt. 2002).

Lynx presence in Minnesota is an artifact of the international border between Canada and the United States artificially splitting the lynx range in this area into two pieces of a whole that exists primarily in adjacent Ontario, highlighting a phenomenon that occurs with differing magnitude all along the international border where lynx habitat occurs on both sides of the border. It appears the Ontario lynx population sometimes expands and occupies northeastern Minnesota and sometimes it contracts and lynx recede from Minnesota. As a result, northeastern Minnesota may not always support lynx. However, we conclude that northeastern Minnesota often supports a resident lynx population because there is ample boreal forest habitat directly connected with that in Ontario, there is a high number of historic lynx records, evidence of lynx reproduction and cyclically abundant snowshoe hares.

Wisconsin—The mapping of Wisconsin shows the discrepancy that can occur between broad-scale vegetation mapping and more precise vegetation maps. Maps of the early vegetation of Wisconsin delineate only small patches of boreal forest primarily along the shore of Lake Superior in extreme northern Wisconsin (Mladenoff no date; Wisconsin Department Natural Resources, in litt. 2003; S. Hassett, in litt. 2003) compared to one third of the State being mapped as mixed deciduous-coniferous forest as broadly classified by Bailey (1998) (McKelvey *et al.* 2000b). Therefore, it is clear that historically in Wisconsin there actually was very little boreal forest and, as a result, little potential lynx habitat (Mladenoff no date; S. Hassett, in litt. 2003; Wisconsin Department Natural Resources, in litt. 2003). Where appropriate lynx forest types do occur in Wisconsin, historic snow conditions have not been optimal for lynx (Weiland 2002). This habitat is more appropriate for bobcats, which are common and well-distributed in northern Wisconsin (S. Hassett, in litt. 2003). As a result, no lynx habitat was mapped on U.S. Forest Service lands in Wisconsin because of a lack of appropriate habitat and snow depth to support lynx (Weiland 2002).

Verified reports of lynx in Wisconsin are limited (29 records from 1870 to 1992) (McKelvey *et al.* 2000b); 16 of these reports are associated with unprecedented cyclic highs that occurred throughout Canada in the early 1960s and 1970s. In 1992, two lynx mortalities were reported (Wydeven 1993; C. Pils, in litt. 1994). No sign of lynx has been found during extensive snow track surveys in potential lynx habitat in northern Wisconsin over the past 4 years (S. Hassett, in litt. 2003). There are no records of lynx breeding in Wisconsin.

Because Wisconsin always has had a limited amount of boreal forest habitat, marginal snow conditions for lynx, and no evidence of reproduction, we concur with Thiel (1987) that, historically, Wisconsin has not supported a permanent, self-sustaining lynx population; rather, lynx presence is associated with cyclic lynx population fluctuations in Canada. We conclude that any lynx found in Wisconsin are dispersers, not residents.

Michigan—Michigan's Upper Peninsula supports boreal forest, and lynx habitat has been mapped on U.S. Forest Service lands in the Upper Peninsula (Great Lakes Ecological Assessment no date; J. Trick, U.S. Fish and Wildlife Service, pers. comm. 2003). Beyer *et al.* (2001) suggested habitat in the Upper Peninsula is limited. Additionally, Lake Superior nearly isolates the Upper Peninsula from source lynx populations in Canada, limiting the number of animals available to successfully establish a population. The majority of occurrences are on the eastern part of the Upper Peninsula where the largest patch of boreal forest historically occurs (Great Lakes Ecological Assessment no date) and which is the shortest distance (lynx can cross the St. Mary's River) from lynx populations in Ontario, Canada. Beyer *et al.* (2001) documented 39 verified records of lynx from Michigan's Upper Peninsula between 1940 and 1997. Twenty-seven of these records correlate with an extreme cyclic high in Canada in the early 1960s (Beyer *et al.* 2001). McKelvey *et al.* (2000b) found 44 verified records Statewide from the mid 1800s until 1983 (Harger 1965; McKelvey *et al.* 2000b). The Lower Peninsula naturally had very little boreal habitat (Great Lakes Ecological Assessment no date) and was even more isolated from source lynx populations in Canada by Lakes Huron and Michigan. Six records exist for Michigan's lower peninsula, all from 1917 or earlier (Harger 1965; McKelvey *et al.* 2000b). There is no evidence of lynx reproduction in Michigan (Beyer *et al.* 2001). Beyer *et al.* (2001) concluded a resident lynx population does not occur in the Upper Peninsula and that dispersers occur only occasionally.

We include Michigan's Upper Peninsula within the range of lynx because it supports some boreal forest and periodically lynx have been present but we conclude that limited number of lynx occurrences did not constitute a resident population but were dispersers. We do not include Michigan's Lower Peninsula because the few historic reports of lynx were in non-lynx habitat.

Great Lakes Summary—We conclude that northeastern Minnesota has historically supported and currently supports a resident lynx population, based on the number of lynx records, evidence of reproduction, and the presence of boreal forest contiguous with occupied habitat in Ontario. Currently, there are many more lynx in northeastern Minnesota than we knew of at the time of the final rule in 2000. We conclude records of lynx in Wisconsin and Michigan constitute dispersing animals, rather than individuals from resident populations, based on the lack of evidence of reproduction, lack of connectivity with suitable habitat, and limited amount of habitat.

Northern Rocky Mountains/Cascades

In this region, the majority of lynx occurrences are associated with the ''Rocky Mountain Conifer Forest'' in the Rocky Mountains of Montana, Idaho, eastern Washington, and Utah, and the Cascade Mountains in Washington and Oregon. The boreal forest of northern Washington, northern Montana, and northern Idaho is directly contiguous with that in adjacent British Columbia and Alberta, Canada. In this mountainous area, lynx habitat occurs at higher elevations and, therefore, is naturally fragmented by topography into island-like patches (McKelvey *et al.* 2000b). Lynx cross intervening landscapes, made up of shrub-steppe, grassland, low-elevation forested or unforested valleys, and in some cases, desert, to reach these habitat ''islands.'' We combine the Northern Rocky Mountains and Cascades together for our analysis because the Cascades and Northern Rocky Mountains regions are only separated by the Okanogan River Valley in northern Washington and because of similar conditions in both regions. Additionally, the Cascades alone supports the smallest amount of lynx habitat in the contiguous United States. Approximately 99 percent of the lynx habitat in the Cascades was estimated to occur on National Forest lands (U.S. Forest Service and Bureau of Land Management 1999); based on current mapping there are nearly 6,000 km^2 (2,300 mi^2) of lynx habitat on National Forest lands in the Cascades (Table 1). By contrast, the Northern Rocky Mountains alone support the largest amount of lynx habitat in the contiguous United States. Approximately 67 percent of the lynx habitat in the Northern Rocky Mountains was estimated to occur on National Forest lands (U.S. Forest Service and Bureau of Land Management 1999), and based on current mapping there are nearly 96,000 km^2 (37,000 mi^2) of lynx habitat just on National Forest lands in the Northern Rocky Mountains (Table 1). The relatively small size and close proximity of the lynx habitat in the Cascades to that in the Northern Rocky Mountains further supports considering both areas as one.

The majority of lands within the mountain ranges in this region are under Federal ownership, predominantly as National Forest lands. As a result, within this region a large amount of lynx habitat is found on Federal lands; as currently mapped, there are approximately 89,841 km^2 (34,688 mi^2) of lynx habitat on National Forest land in the Northern Rockies and 5,949 km^2 (2,297 mi^2) of lynx habitat on National Forest lands in the Cascades; approximately 1,300 km^2 (490 mi^2) on BLM lands; approximately 2,900 km^2 (1,100 mi^2) in Yellowstone National Park; and approximately 1,100 km^2 (430 mi^2) in Glacier National Park (Table 1). Estimates of the quantity of lynx habitat were not available for all National Park Service units in this region.

Washington—Washington has a long record of verified lynx occurrences over the past century. Resident lynx populations were historically found in the northeast and north-central regions and along the east slope of the Cascade Mountains (McKelvey *et al.* 2000b, Stinson 2001). There are a few historic records of lynx in the southern part of the Cascades in Washington near Mt. Adams (Stinson 2001). Trapping data kept since 1961 reflect cyclic patterns (McKelvey *et al.* 2000b). The largest harvests were taken in 1969–1970 (31 lynx) and 1976–1977 (39 lynx) (Washington Department of Wildlife 1993). Results of snow track surveys, remote cameras, and DNA surveys show that lynx continue to occupy north-central and northeast Washington (Base and Zender 2001; Stinson 2001; Aubry *et al.* 2002; B. Maletzke, Okanagon National Forest, in litt. 2003; K. McKelvey, in litt. 2003). Recent records of lynx reproduction also exist for Washington (Stinson 2001; B. Maletzke, in litt. 2003). We conclude resident lynx populations continue to exist in Washington.

Oregon—There is no evidence that a resident lynx population ever occurred in Oregon (Verts and Carraway 1998; K. McKelvey and K. Aubry, Rocky Mountain Research Station, in litt. 2001). Only 12 verified records of lynx exist for Oregon for the past century (Verts and Carraway 1998, McKelvey *et al.* 2000b). The majority of these records are from marginal or non-lynx habitats and correlate with cyclic highs in

northern lynx populations (Verts and Carraway 1998; K. McKelvey and K. Aubry, Rocky Mountain Research Station, in litt. 2001). We do not consider compilations of anecdotal reports of lynx in Oregon reliable for the reasons described by McKelvey and Aubry (Rocky Mountain Research Station, in litt. 2001). Habitats in Oregon that are potentially suitable for lynx are naturally isolated from occupied habitats in Washington and Idaho. There are no records of lynx reproduction in Oregon. Based on the limited verified records of lynx, lack of evidence of lynx reproduction, frequency of occurrences in atypical habitat, and the correlations of such occurrences with cyclic highs, we believe that lynx occur in Oregon as dispersers that have never maintained resident populations.

Idaho—According to Rust (1946), lynx were not abundant but were distributed throughout northern Idaho in the early 1940s, occurring in 8 of the 10 northern and north-central counties. McKelvey *et al.* (2000b) located a number of lynx specimen records from Idaho collected during the early 1900s. Between 1960 and 1991, 35 verified records exist for Idaho, with 13 of these from 1982 to 1991 (McKelvey *et al.* 2000b). Lynx reports in Idaho have been few in the past 20 years. The Idaho Conservation Data Center (2003) has four reports since 2000, and a lynx was confirmed by DNA evidence on the Boise National Forest (K. McKelvey, in litt. 2003). Because past records of lynx in northern and north-central Idaho are common and boreal forest in Idaho is contiguous with boreal forest in Washington, Montana, and British Columbia, Canada, where resident lynx populations are known to exist, we conclude that lynx continue to be present in northern and north-central Idaho, which have the capacity to support a resident population.

Montana—In Montana, numerous historic and current lynx records exist throughout the Rocky Mountain Conifer Forest in the western part of the State (McKelvey *et al.* 2000b; P. Graham, Montana Department of Fish, Wildlife, and Parks, in litt. 1998). Montana's harvest records since the 1950s reflect cyclic lynx populations (McKelvey *et al.* 2000b). Since Montana started accurately recording lynx harvest in 1977, Montana's largest lynx harvests occurred in both 1979 and 1984 when 62 lynx were taken each season (McKelvey *et al.* 2000b; B. Giddings, Montana Department of Fish, Wildlife, and Parks, in litt. 1994). Harvest records, winter track surveys conducted since 1990/1991, and trapper logbooks, led Montana Department of Fish, Wildlife, and Parks to conclude that the State's lynx population is distributed throughout what it determined to be ''predicted lynx habitat'' (P. Graham, Montana Fish, Wildlife and Parks, in litt. 1998). Snow track surveys have documented lynx tracks throughout the range in western Montana (P. Graham, in litt. 1998). Reproduction is documented; 14 dens were located between 1999 and 2001 in a study area in northwestern Montana (Brainerd 1985, Squires and Ruggiero 2001). In some mountain ranges in southwest Montana, lynx are present but in apparently low numbers, based on recent surveys (Gehman and Robinson 2000, Squires *et al.* 2002). We conclude that a resident population of lynx is distributed throughout suitable habitat in the northern and central mountain ranges in western Montana, whereas in the mountains in southwestern Montana, habitat naturally becomes more marginal (more patchy and drier forest types) and supports dispersers more often than resident populations.

Wyoming—Most historical and recent records of lynx in Wyoming are from the northwestern mountain ranges (Reeve *et al.* 1986; McKelvey *et al.* 2000b; B. Wichers, Wyoming Game and Fish, in litt. 2003). McKelvey *et al.* (2000b) found only 30 verified records Statewide since 1856. Lynx reports from Yellowstone National Park have always been rare; since 2001, lynx survey efforts in the Park have detected one lynx (Murphy *et al.* 2003). In west-central Wyoming, a female lynx with kittens was documented in 1998 (Squires and Laurion 2000). However, the female died of starvation and it is presumed the kittens also died, perhaps indicating inadequate habitat and prey base (Squires *et al.* 2001). A male lynx was radio-tracked moving long distances from its home range in west-central Wyoming and into Yellowstone National Park as recently as 2001 (Squires *et al.* 2001). It is possible, based on recent evidence of reproduction, that in the past a resident lynx population occurred in northwestern Wyoming. However, few lynx have been found during several recent surveys. We believe this is because the habitat is naturally marginal (more patchy and drier forest types) and less capable of supporting snowshoe hares (B. Wichers, in litt. 2003), and is farther from source populations. Therefore, we believe lynx currently in Wyoming are dispersers and that the habitat may not be able to support resident populations.

Utah—There are only 10 verified records of lynx in Utah since 1916 (McKay 1991; McKelvey *et al.* 2000b). Nearly all the reliable lynx reports are from the Uinta Mountain Range along the Wyoming border (McKay 1991). Four of the records correlate to the cyclic highs of the 1960s and 1970s. Recent DNA results documented the presence of a lynx in Utah (McKelvey in litt. 2003). There is no evidence of lynx reproduction in Utah. We conclude that lynx that occur in Utah are dispersers rather than residents, because most of the few existing records correspond to cyclic population highs, there is no evidence of reproduction, and boreal forest habitat in Utah is remote and far from source lynx populations.

Northern Rocky Mountains/Cascades Summary—In summary, we conclude that the Northern Rocky Mountains/Cascades Region continues to support resident lynx populations in north-central and northeastern Washington, western Montana and likely northern Idaho. We conclude that lynx have always occurred as dispersers in Oregon and Utah. In northern Wyoming it appears habitat is less suitable to support resident populations and, therefore, we conclude animals in this area are most likely dispersers.

Southern Rocky Mountains

This area represents the extreme southern edge of the range of the lynx. The southern boreal forest of Colorado and southeastern Wyoming is isolated from boreal forest in Utah and northwestern Wyoming by the Green River Valley and the Wyoming basin (Findley and Anderson 1956 in McKelvey *et al.* 2000b). These habitats reduce opportunities for emigration from the Northern Rocky Mountains/Cascades Region and Canada, and may isolate lynx in the Southern Rocky Mountains in Colorado and southeastern Wyoming (Halfpenny 1982; Koehler and Aubry 1994). However, the potential still exists for lynx to immigrate to the southern Rocky Mountains, particularly during extreme cyclic population highs.

As in the Northern Rocky Mountains/Cascades region, lynx habitat in the Southern Rocky Mountain region occurs at high elevations and, therefore, is naturally fragmented by topography and drier south- and west-facing slopes into island-like patches rather than expansive, contiguous blocks (Ruediger *et al.* 2000). Accurate estimates of the amount of lynx habitat on all land ownerships in the Southern Rocky Mountain region are not available. The only estimate of lynx habitat on all ownerships was based on coarse maps of vegetation types that contained the majority of lynx occurrences; based on this type of mapping, it was roughly

estimated that there were 27,000 km^2 (10,300 mi^2) of potential lynx habitat across all ownerships in this region (U.S. Forest Service and Bureau of Land Management 1999). All of this habitat is found in the mountains, which are primarily under Federal ownership (U.S. Geological Survey 1998). In the Southern Rocky Mountains region, as currently mapped there are approximately 30,000 km^2 (12,000 mi^2) of lynx habitat on U.S. Forest Service lands and approximately 700 km^2 (280 mi^2) on BLM lands (Table 1) (E. Johnston, in litt. 2003; J. Whitney, in litt. 2003).

Colorado—The montane and subalpine forest ecosystems in Colorado are naturally highly fragmented (Thompson 1994), which we believe has always limited the potential for lynx. Most historic records are distributed among the northern and central mountain ranges in Colorado (McKelvey *et al.* 2000, Meaney 2002). There is a great deal of inconsistency among historic lynx reports for Colorado (Meaney 2002); as a result, it is difficult to interpret historic records and we question some of the numbers reported. However, based on available information, Thompson and Halfpenny's (1989) description seems accurate: ''it is unlikely lynx were ever very common and have probably existed as discontinuous, remnant populations,'' a conclusion that is supported by the State of Colorado (T. Blickensderfer, in litt. 2003). A total of 22 positive lynx reports exist in State records since the late 1800s (J. Mumma, Colorado Division of Wildlife, in litt. 1998); although McKelvey *et al.* (2000b) considered only 17 of these records ''verified.'' The last verified lynx specimens were taken in 1973–1974 (Halfpenny *et al.* 1982; T. Blickensderfer, in litt. 2003); which coincided with extreme cyclic population highs that occurred throughout the west and Canada. No verified records of lynx exist since 1974; however, extensive survey efforts have resulted in periodic reports of lynx tracks (Halfpenny and Miller 1981; Thompson and Halfpenny 1989; Anderson 1990; Thompson and Halfpenny 1991; Andrews 1992; Carney 1993; Fitzgerald 1994; Colorado Division of Wildlife *et al.* 1997; T. Blickensderfer, in litt. 2003). Based on historic lynx records, we are uncertain whether Colorado supported a small resident lynx population that may have been extirpated or whether historic records were of dispersers that arrived during extremely high population cycles. If these historic records did represent resident populations rather than solely dispersing animals that emigrated from the Northern Rocky Mountains/Cascades or Canada that were unable to sustain persistent populations, we believe a viable native resident lynx population no longer exists in Colorado. We believe the most likely cause for the loss of resident lynx populations in Colorado was a natural process because lynx in this region are isolated from source lynx populations and habitats. Immigration appears necessary to augment and maintain local lynx populations, especially in transitional habitats at the southern margins of lynx range. The distance and isolation of this region from source populations outside of the Southern Rocky Mountains severely reduced, if not entirely precluded, the immigration that was likely necessary for the lynx population of this region to sustain itself. If these historic records were of dispersers that arrived when there were extremely high population cycles, it would be inappropriate to conclude these populations were extirpated because dispersers can continue to arrive in these areas in the future.

In 1997, the Colorado Division of Wildlife in cooperation with numerous government and private entities began a program to introduce lynx from Canada and Alaska into Colorado in an effort to reestablish a resident lynx population. In 1999 and 2000, 96 lynx were released into in Colorado with the intention of releasing an additional 186 lynx between 2003 and 2009 (T. Blickensderfer, in litt. 2003). It is too early to determine whether this effort will be successful (T. Blickensderfer, in litt. 2003), although reproduction has been recently documented (T. Malmsbury, in litt., 2003).

Southeastern Wyoming—Habitat in southeastern Wyoming is contiguous with that in Colorado. Records from southeastern Wyoming are scarce (Reeves 1986, McKelvey 2000b). The most recent record is from the Laramie Range in 1963, a time when the lynx population cycle was at an unprecedented high. The core of lynx range in this region was in Colorado. Because habitat in this area is naturally marginal, patchy, and less suitable for snowshoe hares (B. Wichers, in litt. 2003) and there are extremely few historic records of lynx in southeastern Wyoming with no evidence of breeding, we conclude a resident population never existed in southeast Wyoming and that reports of lynx were of dispersers.

Southern Rocky Mountains Summary—We are uncertain whether lynx in this region historically occurred as a resident population or if historic records were of periodic dispersers. We conclude that if a resident lynx population historically occurred in the Southern Rocky Mountains, then this native population has been lost. We surmise the primary cause for the loss of this population was its natural isolation from potential source populations. Although habitats in the Southern Rockies are far from source populations and more isolated, it is still possible that dispersers could arrive in the Southern Rocky Mountains during extreme highs in the population cycle. It remains to be seen if the State of Colorado's reintroduction program will reestablish a resident lynx population.

Habitat-Related Threats Analysis

The final rule discussed the factors affecting lynx habitat, which included human alteration of the distribution and abundance, species composition, successional stages, and connectivity of forests, and the resulting changes in the forest's capacity to sustain lynx populations. The final rule noted that two important human influences on snowshoe hare habitat are timber harvest and fire suppression; however, the final rule acknowledged that information about how lynx populations respond to these specific impacts is limited. Studies of lynx and snowshoe hare have documented lynx presence and reproduction and snowshoe hare abundance in a variety of managed landscapes (Apps 2000; Squires and Laurion 2000; Squires and Ruggiero 2001; Stinson 2001; Homyack 2003; Maine Department of Inland Fisheries and Wildlife 2003; Minnesota Department of Natural Resources, in litt. 2003; G. Matula, in litt. 2003; Mills and Griffin, in litt. 2003).

In the final rule we cited calculations of the extent of lynx habitat encompassed in certain regions, land ownerships, and land management designations. These calculations were provided to us in a biological assessment (U.S. Forest Service and Bureau of Land Management 1999). Because these calculations were based on coarse mapping of vegetation types, they overestimated the amount of lynx habitat in many areas (particularly in the Great Lakes, as described above) and possibly underestimated it in other areas, but they nonetheless provided a perspective on the amount of lynx habitat overall and the proportions in various ownerships and land management designations. Since the final rule, lynx habitat has been mapped on Federal lands in order to conduct analyses under section 7 of the Act. As a result, estimates of the amount of lynx habitat on some Federal lands are more

accurate than in the 1999 biological assessment (U.S. Forest Service and Bureau of Land Management 1999; S. Gniadek, in litt. 2003; E. Johnston, in litt. 2003; J. Whitney, Bureau of Land Management, in litt. 2003). Refined calculations for all ownerships were not provided; therefore it was not possible to recalculate the information in the biological assessment for the purposes of this remanded decision. Nonetheless, for the Southern Rocky Mountains and Northern Rocky Mountains/Cascades, we believe the proportions of lynx habitat provided in the biological assessment are still fairly accurate and useful because if the same refinements and mapping that occurred on National Forest and BLM lands were applied to non-Federal lands it would presumably result in similar adjustments. Therefore, in this analysis we will use the proportions of Federal and non-Federal lands in the Northern Rocky Mountains/Cascades and Southern Rocky Mountains, and the proportions in either developmental or non-developmental management designations for the Northern Rocky Mountains/Cascades, Southern Rocky Mountains, and Great Lakes provided in the biological assessment and used in the final rule.

In all regions where the lynx range in the contiguous United States, timber harvest and its related activities are the predominant land use affecting lynx habitat. The final rule stated that timber harvest and associated forest management can be benign, beneficial, or detrimental to lynx depending on harvest methods, spatial and temporal specifications, and the inherent vegetation potential of the site. Some timber harvest regimes can result in reduced cover, unusable forest openings, and large monotypic stands with sparse understories that are unfavorable for lynx and snowshoe hare (de Vos and Matel 1952; Harger 1965; Hatler 1988; Brittell *et al.* 1989; Koehler 1990; Hoving 2001; Homyack 2003; Mills and Griffin, in litt. 2003). Mechanical thinning (pre-commercial thinning) of densely stocked young stands to promote vigorous growth of fewer trees can reduce the stem densities required to support high numbers of snowshoe hare (U.S. Forest Service *et al.* 1999a; Homyack 2003; Mills and Griffin, in litt. 2003).

The final rule explained that forestry practices can be beneficial when the resulting understory stem densities and structure meet the forage and cover needs of snowshoe hare (Keith and Surrendi 1971; Fox 1978; Conroy *et al.* 1979; Wolff 1980; Parker *et al.* 1983; Litvaitis *et al.* 1985; Monthey 1986; Bailey *et al.* 1986; Koehler 1990; McKelvey *et al.* 2000d). Snowshoe hare densities tend to be highest in regenerating stands with very high stem densities (Hodges 2000a, 2000b, Griffin and Mills in press, Homyack 2003). Although large openings initially may not be used by snowshoe hare and lynx, regeneration harvest units (*e.g.*, clear-cut) in appropriate habitat types eventually (in 10 years or more depending on the type of forest) achieve early successional stages with dense understories as preferred by snowshoe hares (Monthey 1986; Quinn and Parker 1987; Koehler 1990; Koehler and Brittell 1990; Washington Department of Wildlife 1993; McKelvey *et al.* 2000c; Hoving 2001; Homyack 2003). Lynx can readily move across landscapes fragmented by commercial forestry (Squires and Laurion 2000).

The final rule suggested that large clear-cut may be detrimental to lynx because they might eliminate the mosaic forest ages and structure needed by lynx. We have learned since publication of the final rule that, in northern Maine, optimal forest conditions for lynx and snowshoe hares have been created as a result of large-scale clear cutting in the 1970s and 1980s to salvage spruce and fir stands damaged by insects. A large proportion of Maine's northern forest is currently in a stage of regeneration that provides dense understories where snowshoe hares are most abundant (Hoving 2001; Homyack 2003; Krohn 2003; G. Matula, in litt. 2003). Despite extensive clear cutting, the forests of northern Maine continue to provide a mosaic of forest ages and structure, such as required for lynx denning. As a result, Maine lynx populations are high (see ''Maine'' discussion above). Larger openings, such as created by clear-cut, can often more closely resemble vegetative patterns that follow natural disturbance events (*e.g.*, fire, windthrow, and insect outbreaks) and decrease amounts of edge favorable to generalist predators (McKelvey *et al.* 2000c, Krohn 2003). We anticipate that where good snowshoe hare and lynx habitat occurs within the contiguous United States, regenerating stands that result after large clear-cut can be managed to allow regrowth of a dense understory, so that they too will provide good conditions for snowshoe hares and lynx.

Recent research in Maine and Montana measured the effects of some timber harvest regimes on snowshoe hare populations, which has implications for lynx. In Maine in 2000–2002, snowshoe hare densities were highest in unthinned, 12- to 20-year old clear-cut (1.77 hares per ha (0.72 hares per ac)) (Homyack 2003). Pre-commercially thinned stands averaged about half the hare density (0.98 hares per ha (0.40 hares per ac)) as unthinned stands. Hare densities in mature conifer forests with sparse understories were low (0.23 hares per ha (0.09 hares per ac)). Lowest hare densities were in partial-harvest cuts (0.15 hares per ha (0.06 hares per ac)). In Montana, preliminary results of research since 1998 found that in winter snowshoe hare densities were high in mature forests with abundant understories and lowest in stands that had been pre-commercially thinned or in sparsely-regenerating clear-cut; in this study standard pre-commercial thinning had a negative effect on snowshoe hare densities in most places and times (Mills and Griffin, in litt. 2003). Furthermore, preliminary findings in Montana substantiate what scientists have generally presumed—snowshoe hares are exposed to higher predation and suffer higher mortality rates in forest stands with open understories (Mills and Griffin, in litt. 2003).

The final rule also explained that fire has an important role in forest ecology in some forest types in the United States. During the early 20th century, Federal and State agencies in the contiguous United States enacted a policy of suppressing forest fires. The effects of fire suppression, as well as timber harvest, on lynx habitat vary among the geographic regions (Agee 2000) and will be discussed separately below.

Except in the Northeast, a substantial amount of lynx habitat in the contiguous United States occurs on Federal lands, primarily National Forests and BLM lands (see Table 1). Since the listing of the lynx in 2000, Conservation Agreements the U.S. Forest Service and BLM have signed with the Service (Bureau of Land Management and U.S. Fish and Wildlife Service in litt. 2000; U.S. Forest Service and U.S. Fish and Wildlife Service in litt. 2000), and the programmatic biological opinion on National Forest and BLM land management plans (U.S. Fish and Wildlife Service 2000) committed the U.S. Forest Service and BLM to use the LCAS in determining the effects of actions on lynx (Ruediger *et al.* 2000). The final rule explained that the LCAS was developed to provide a consistent and effective approach to conserve lynx and lynx habitat on Federal lands across its range in the contiguous United States (Ruediger *et al.* 2000). The U.S. Forest Service further committed to deferring any actions not involving third parties that would adversely affect lynx until such

time as the Forest Plans were amended or revised to adequately conserve lynx. Adherence to the Conservation Agreements, the biological opinion, and the LCAS in assessing the impacts of Federal actions on lynx alleviates the affects of National Forest and BLM land management plans and the activities they allow on lynx, such as timber harvest or fire management, that were identified in the final rule and the 1999 biological assessment (U.S. Forest Service and Bureau of Land Management 1999) (see Factor D).

Northern Rocky Mountains/Cascades and Southern Rocky Mountains

In the final rule, we recognized that the Northern Rocky Mountains encompass more privately-owned lynx habitat than elsewhere in the west (U.S. Forest Service and Bureau of Land Management 1999). In the final rule, we stated that almost one-third of lynx habitat is in private ownership (U.S. Forest Service and Bureau of Land Management 1999). Although we lacked specific information when we published the final rule, we recognized that large portions of this habitat likely occur on privately-owned corporate timber lands where timber harvest and thinning occurs. Data regarding private lands is generally not as available as data pertaining to Federal lands; as a result, few data are available concerning the quality of lynx and snowshoe hare habitat on private lands. However, preliminary results of research conducted on privately-owned corporate timber lands in northwestern Montana show that such lands provide varying levels of snowshoe hare densities (abundant to low), depending on the timber harvest regime (Mills and Griffin, in litt. 2003).

The final rule identified that the majority of lynx habitat in the west occurs on Federal lands. According to assessments in 1999, in the Northern Rocky Mountains, 72 percent of lynx habitat is on National Forest or BLM lands, 99 percent in the Cascades, and 82 percent in the Southern Rocky Mountains (U.S. Forest Service and Bureau of Land Management 1999). As currently mapped, in the Northern Rocky Mountains/Cascades region there are approximately 96,000 km^2 (37,000 mi^2) of lynx habitat on National Forest Lands and approximately 1,236 km^2 (477 mi^2) on BLM lands (see ''Table 1'') (E. Johnston, in litt. 2003; J. Whitney, in litt. 2003). In the Southern Rocky Mountain region there are approximately 30,000 km^2 (12,000 mi^2) of lynx habitat on National Forest Lands and approximately 700 km^2 (280 mi^2) on BLM lands (see Table 1) (E. Johnston, in litt.2003; J. Whitney, in litt. 2003).

Federal lands are managed as either ''developmental'' or ''non-developmental'' allocations. Lands in developmental allocations are managed for multiple uses, such as recreation and timber harvest, some of which may conflict with conservation of lynx. Lands within non-developmental allocations are managed for the most part to allow natural ecological processes to dominate and contain large portions of wilderness or other natural areas (U.S. Forest Service and Bureau of Land Management 1999; D. Prevedal, U.S. Forest Service, in litt. 1999). Timber harvest and construction of roads or fire suppression typically do not occur or are very limited in lands managed in non-developmental allocations. Lynx (including introduced lynx in Colorado) continue to be broadly distributed throughout lynx habitat in the Northern Rocky Mountains/ Cascades and Southern Rocky Mountains (McKelvey *et al.* 2000b; T. Blickensderfer, in litt. 2003), both inside and outside of non-developmental allocation areas (U.S. Forest Service and Bureau of Land Management 1999).

Non-developmental allocations are beneficial for lynx because they are managed for the most part to allow natural ecological processes to dominate. This is significant, because in the Northern Rocky Mountains, 41 percent of lynx habitat is in non-developmental allocations; in the Cascades, 85 percent of lynx habitat is in non-developmental allocations; and in the Southern Rocky Mountains, 23 percent is in non-developmental status (U.S. Forest Service and Bureau of Land Management 1999).

The final rule described the amount of lynx habitat managed in developmental allocations for multiple uses in the Northern Rocky Mountains/Cascades, and Southern Rocky Mountains. In the Northern Rocky Mountains, 59 percent of lynx habitat is in developmental allocations, in the Cascades 15 percent, and in the Southern Rocky Mountains 77 percent (U.S. Forest Service and Bureau of Land Management 1999). Activities that may be detrimental to lynx or lynx habitat, such as some timber harvest regimes and fire suppression, can occur in developmental allocations.

Timber harvest levels on Federal land in the West have declined consistently and dramatically (approximately 80 percent) over the past decade or longer (R. Gay, U.S. Forest Service, in litt. 1999). Timber harvest in specific lynx forest types also has declined in the Northern Rocky Mountains (B. Ballenbacher, U.S. Forest Service, in litt. 1999; B. Ferguson, U.S. Forest Service, pers. comm. 1999), Cascades (F. Zenson, U.S. Forest Service, pers. comm. 1999), and the Southern Rocky Mountains (B. Short, U.S. Forest, in litt. 1999).

On National Forest lands, with a few exceptions for projects involving third parties (applicants), activities that may affect lynx on developmental allocations are addressed by adherence to the LCAS and its conservation measures for lynx. For example, the Forest Service has curtailed its precommercial thinning on Forest Service land since the signing of its Conservation Agreement with the Service and the programmatic biological opinion on Forest and BLM land management plans, both of which abide by the LCAS (see Factor D). Risks to lynx or lynx habitat on BLM lands also are being addressed through adherence to the Conservation Agreement. Most Federal land management plans have yet to be amended to provide long-term conservation for lynx.

Timber harvest activities on non-Federal lands are guided by State or Tribal forest practice rules whose requirements vary (*e.g.*, Idaho Department of Lands 1996, Washington Administrative Code 2001, Montana State Forest Practices Rules 2003). Under Washington Forest Practices Board regulations, three major non-Federal landowners have adopted and implemented lynx habitat management plans on their lands in Washington (see Factor D).

We conclude that some timber harvest activities, such as pre-commercial thinning, may reduce the quality of snowshoe hare habitat in local areas on non-Federal lands in the Northern Rocky Mountains/Cascades and Southern Rocky Mountains, and thus may negatively affect lynx or lynx habitat at local scales. Alternatively, timber harvest regimes in lynx habitat that create a dense understory provide good snowshoe hare and lynx conditions. A significant proportion of lynx habitat is managed in non-developmental status, which is beneficial for lynx. Furthermore, lynx habitat on National Forest and BLM lands is managed to conserve lynx. As a result, we conclude the current threats from timber harvest and thinning on both non-Federal and Federal lands to lynx in the Northern Rocky Mountains/ Cascades and Southern Rocky Mountains are low.

The final rule explained that natural fire plays a significant role in creating the mosaic of vegetation patterns, forest stand ages and structure that provide good lynx and snowshoe hare habitat in the western mountain ranges of the

United States. The final rule also explained that fire suppression in the Northern Rocky Mountains/Cascades and Southern Rocky Mountains during the past 50 years has likely had little impact on lynx, because most forests where lynx habitat occurs have natural fire return intervals that are longer than the period of time of human fire suppression or because fires that do occur in lynx habitat are large, high-intensity fires that are difficult to suppress. Where fire suppression does occur in lynx habitat, it can reduce the quality of habitat by reducing the amount of younger forests or by changing the species composition and structure of forests.

Because of the many large forest fires in the West since 2000, there is increased national interest in reducing the risk of fire by reducing fuel loads on both Federal and non-Federal lands (U.S. Department of Agriculture and U.S. Department of the Interior 2001). Such efforts can affect lynx habitat if they reduce the amount of understory vegetation. Understory removal may affect the capability of stands to support snowshoe hares. At this time, few of these fire suppression efforts have been implemented, so it is impossible to analyze their effects on lynx. The LCAS recommends that on Federal lands fire be restored as an ecological process. The U.S. Forest Service and BLM use the LCAS in determining the effects of their actions on lynx (see Factor D).

As in the final rule, we conclude that past fire suppression has had limited impact in lynx habitat in the Northern Rocky Mountains/Cascades and Southern Rocky Mountains; however, it may affect lynx habitat quality at some local scales, particularly on non-Federal lands. Although increased interest in fire suppression and reduction of heavy fuels has the potential to affect snowshoe hare habitat, we conclude the threat to lynx in the Northern Rocky Mountains/Cascades and Southern Rocky Mountains as a result of the current effects of fire suppression is currently low.

Northeast

In the Northeast, lynx habitat is supported almost entirely on a non-Federal land base (private, State, or county), predominantly commercial forest lands, as was recognized in the final rule. The final rule discussed activities that may affect lynx in the Northeast Region. It described the history of logging and forest management through the 1800s and 1900s and the effects on lynx habitat in this region.

Since the final rule, our understanding of forest conditions in Maine, which is the core of the lynx range in the Northeast, has improved. Historically, large-scale natural disturbances (wind, ice, and insect epidemics) and traditional forestry practices (including some level of clear-cutting) created the early successional forest stages where snowshoe hares generally are most abundant. In response to insect outbreaks in the 1970s and 1980s, extensive clear-cutting to salvage diseased trees and subsequent herbicide use to promote regrowth of conifers created the current forest conditions that are optimal for snowshoe hares and lynx (Hoving 2001; Homyack 2003, Krohn 2003; G. Matula, in litt. 2003). Currently, large amounts of the forest are in a stage of regeneration that supports high snowshoe hare densities (Homyack 2003). As a result, lynx numbers also are high (see ''Maine'' discussion, above).

At its peak in the late 1990s, 20 to 25 percent of the Maine forest was in an early regeneration stage (Gadzik *et al.* 1998), which is unnaturally high and out of proportion to historic conditions when only 3 to 7 percent of the forest was in this stage of regeneration (Krohn 2003). Nonetheless, this created exceptional snowshoe hare and lynx habitat.

Passage of the Maine Forest Practices Act has in 1989 limited the amount of clear cutting. As a result, forest landowners have changed their harvest practices to extensive use of pre-commercial thinning and partial harvesting rather than clear cutting (Gadzik *et al.* 1998, Homyack 2003; Krohn 2003). These techniques result in forest stands with sparse understories that support low snowshoe hare densities (Homyack 2003). If harvest practices cease to provide early successional forest with dense understories or stand-replacing disturbances (such as provided by large clear-cut) in proportions similar to historic conditions, habitat conditions for snowshoe hare and lynx will be diminished.

The quantity of lynx habitat in Maine is expected to decline as stands in late regeneration created by clear cutting in the 1970s and 1980s succeed to mature forest. Snowshoe hare populations begin to decline in stands about 30 years after clear cutting when the forest canopy closes, shading increases at ground level, and the dense understory that supports high populations of snowshoe hares is greatly reduced. Over 95 percent of cutting that occurs now is partial harvesting (selective cutting, patch cuts). This new cutting regime supports lower populations of snowshoe hares (Fuller 1999, Homyack 2003) and will not provide the large patches of regenerating forest that support the more numerous lynx populations observed at the present time.

As explained in the final rule, in Northeast forests fire return intervals are very long as a result of the moist maritime influence. Thus, fire did not historically play a significant role in creating early successional habitats. While current fire suppression may have localized minor effects, it is not likely affecting lynx habitat overall in the Northeast.

As recognized in the final rule, timber harvest and associated activities on non-Federal lands exert the most influence on lynx habitat in the Northeast and have created the optimal conditions that currently exist for lynx and snowshoe hares in northern Maine. At this time, we do not know if future timber harvest practices will continue to provide forest conditions that are capable of supporting snowshoe hare densities that can, in turn, support a resident lynx population. We conclude the threat to lynx in the Northeast because of timber harvest and associated activities is moderate, although it may have more severe impacts if a natural mosaic of forest stand ages and structure that can support snowshoe hares and lynx is not maintained.

Great Lakes

The final rule described habitat conditions for lynx in the Great Lake Region. It described the history of logging and forest management through the 1800s and 1900s that was similar to the history in the Northeast.

We know that the estimate of lynx habitat provided in 1999 (U.S. Forest Service and Bureau of Land Management 1999) substantially overestimated the amount of lynx habitat in the Great Lakes because of the coarse-scale vegetation map on which the estimate for the Great Lakes was based (see ''Great Lakes'' discussion above). By using more accurate maps we now know that the majority of lynx habitat in the Great Lakes is on Federal lands, primarily National Forest lands, contrary to the information used in the final rule that incorrectly portrayed a high proportion of lynx habitat on non-Federal lands (Great Lakes Ecological Assessment no date, Mladenoff no date; Minnesota Department Natural Resources, in litt. 2003; Wisconsin Department Natural Resources, in litt. 2003). In the Great Lakes Region, approximately 18,000 km^2 (7,000 mi^2) of lynx habitat are currently mapped on National Forest lands (Table 1).

Unfortunately, an accurate estimate of the amount of lynx habitat across all land ownerships in the Great Lakes is still not available.

A large amount of the boreal forest in northeastern Minnesota where lynx are found is managed as the Boundary Waters Canoe Area Wilderness (4,160 km² (1,600 mi²)) (Superior National Forest website). Wilderness is managed to let natural ecological processes dominate, which is beneficial to lynx.

The final rule recognized that timber harvest is the predominant use of the forests where lynx habitat occurs in the Great Lakes region; the final rule also explained that timber harvest levels on National Forest lands in the Great Lakes have declined by approximately 20 percent over the past decade (R. Gay, U.S. Forest Service, in litt. 1999). As described in the final rule, mixed conifer/hardwood stands are often replaced and maintained in pure deciduous stands because of the importance of aspen as a crop tree (Agee 2000). On managed timber lands in all ownerships, the maintenance of aspen to produce pulpwood precludes the establishment of coniferous forest types, which in turn likely diminishes snowshoe hare habitat quality.

The final rule described natural fire regimes and the history of fire suppression in the Great Lakes. Fire suppression policies across all land ownerships in the Great Lakes are such that fire is unlikely to assume its natural role in creating a mosaic of vegetation communities and age classes across the landscape. However, the final rule established that on some Federal lands in northeastern Minnesota, where the region's highest quality and quantity of lynx habitat is found, and where numerous lynx have been documented in the past 3 years (Minnesota Department of Natural Resources in litt. 2003), fires are allowed to burn. The LCAS recommends that on Federal lands fire be restored as an ecological process. Locally, fire suppression may reduce the quality of lynx habitat in the Great Lakes.

Since the listing of the lynx in 2000, activities that may affect lynx on National Forest lands are addressed by the U.S. Forest Service's adherence to the LCAS in alleviating the impacts of actions on lynx (see Factor D). However, at this time, most Federal land management plans have not been amended or revised to provide long-term conservation of lynx.

We conclude that timber harvest and fire suppression on non-Federal lands may cause local impacts to lynx and snowshoe hare habitat in the Great Lakes Region. Since the lynx was listed, lynx habitat on National Forest lands is managed to conserve lynx. As a result, we conclude the threat to lynx in the Great Lakes because of timber harvest and fire suppression is low.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

The final rule explained that one of the primary reasons we proposed to list lynx, based on available information at the time, was our conclusion that the low numbers of lynx in the contiguous United States and southern Canada were the residual effects of over-trapping believed to have occurred in the 1970s and 1980s, in response to unprecedented high pelt prices, a concern that was widely shared (Brand and Keith 1979; Todd 1985; Bailey *et al.* 1986; Hatler 1988; Washington Department of Wildlife 1993).

The final rule explained the variables that influence trapping records and the use of such records as indicators of historic lynx population changes. The final rule recognized that trapping mortality can either compensate for natural mortality or be in addition to natural mortality, depending on when it occurs in the population cycle. The final rule described trends in lynx pelt prices, and we will not restate them here.

The final rule explained that based on information obtained after public review and comment of the proposed rule in 1998, we now recognize that the cyclic peak harvest returns of the early 1960s and 1970s were unprecedented highs for the 20th century (McKelvey *et al.* 2000b; Mowat *et al.* 2000). Wildlife managers may have expected harvest returns during the 1980s and 1990s to be comparable to the anomalous cyclic peaks of the 1960s and 1970s. When harvest returns failed to be as high as anticipated, managers interpreted the lower returns to be caused by overtrapping when pelt prices were high (Bailey *et al.* 1986; Hatler 1988; Hash 1990; Washington Department of Wildlife 1993). We compared the lynx harvest returns in the 1980s and early 1990s to harvest data dating back over a longer period of time (*i.e.*, prior to 1960) and found that lynx harvest returns were not unusual nor appreciably lower than those recorded prior to the 1960s.

To demonstrate that lynx harvest returns in the 1980s and 1990s were not substantially different from returns prior to the 1960s and that wildlife managers were inappropriately using returns from the 1960s and 1970s as the standard on which to compare subsequent returns and set seasons, the final rule thoroughly described historic trapping data for Minnesota, Montana, and Washington, which will not be restated here.

The final rule explained that Mowat *et al.* (2000) suspected that over-trapping may deplete local lynx populations, particularly at the southern part of the lynx's North American range, but that dispersal of lynx from healthy populations has led to the repopulation of such areas. States and Tribes closed lynx trapping seasons prior to the listing of the lynx, which, in addition to the listing of lynx under the Act, eliminated the mortality of lynx through legal lynx-targeted trapping and we have no information suggesting that illegal lynx-targeted trapping occurs in the contiguous United States. We continue to believe that precautions taken by States and Provinces to restrict lynx trapping since the 1980s likely have prevented and continue to prevent the over-harvest of resident lynx. Most Canadian provinces control for potential over-trapping by closing the lynx trapping seasons during the lows in the lynx population cycle (*e.g.*, Environment et faune Quebec 1995). However, some theorize that lynx harvest in Canada reduces the numbers of lynx that could potentially disperse to the contiguous United States. In the final rule we explained that low numbers of lynx in the contiguous United States compared to Canada occur not as a result of over-trapping, but because the prey of lynx is limited by naturally fragmented habitat, topography, and climate.

As we emphasized in the final rule, legal trapping, snaring, and hunting for bobcat, coyote, wolverine, and other furbearers create a potential for incidental capture or shooting of lynx. We know that incidental capture and shooting occurs (Wydeven 1998; M. DonCarlos in litt. 1994; Colorado Department of Wildlife 2003; R. Naney, U.S. Forest Service, pers. comm. 1999, B. Giddings, Montana Fish, Wildlife and Parks, pers. comm. 2001; C. McLaughlin, Maine Department of Inland Fisheries and Wildlife, pers. comm. 2001; J. Cochrane, U.S. Fish and Wildlife Service, pers. comm. 2003; M. McCollough pers. comm. 2003); no reliable recordkeeping exists to determine how frequently such taking occurs. The effect on the individual lynx captured has varied, usually depending on the type of trap or the set and whether the trap was checked in time to successfully release or rehabilitate the animal. These captures have sometimes caused no injuries and the animal was immediately released back into the wild, sometimes lynx were injured but were rehabilitated and then

released into the wild, and sometimes the captures have resulted in mortality. Mortality of captured individuals likely has differing impacts on the ability of local populations to persist depending on the size of the local population and when the trapping occurs in the population cycle. Lynx persist throughout their range despite the incidental catch that presumably has occurred throughout the past, probably at higher levels than presently. Although we are concerned about the mortality of lynx that are incidentally captured, we have no information to indicate that the loss of these individuals has negatively affected the overall ability of lynx in the contiguous United States to persist. We recognize that individuals may be lost, which could affect small, local populations.

Based on the information described in this section, we conclude that legal, lynx-targeted harvesting does not occur and therefore is not a factor threatening the contiguous United States lynx population. The threat to lynx populations from illegal harvesting, if any, and incidental catch by trapping, snaring, or hunting is low.

Factor C. Disease or Predation

Mountain lions (*Puma concolor*) and fisher (*Martes pennanti*) have been documented to prey on lynx (Squires and Ruggiero 2001, G. Matula, in litt. 2003) but there is no information to suggest that these natural events are threatening lynx populations. Plague has been documented in the Colorado reintroduced population, but its overall impact is unknown at this time (T. Shenk, Colorado Division of Wildlife, pers. comm 2003). As in the final rule, we conclude that disease and predation are not factors threatening lynx.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The final rule (1) outlined regulatory protections that States and Tribes within the range of the lynx have in place to provide protection to the species, (2) described how lynx is protected under the Convention on International Trade in Endangered Species (CITES), and (3) identified efforts on private lands to provide for the conservation of the species. These protections and efforts will not be reiterated here.

Timber harvest activities on non-Federal lands are guided by State or Tribal forest practice rules whose requirements vary (*e.g.*, Maine Forest Practices Act 1989); however, not all States or Tribes have forest practice rules.

The final rule discussed the fact that a substantial amount of lynx habitat in the contiguous United States is found on Federal lands, primarily National Forest and BLM lands. The final rule thoroughly described the purposes and analyses of the LCAS and the biological assessment of National Forest and BLM Land Management Plans (U.S. Forest Service and Bureau of Land Management 1999, Ruediger *et al.* 2000). At that time, we found that Federal land management plans did not adequately address risks to lynx and, as identified in the LCAS, that plans allowed actions that cumulatively could result in significant detrimental effects to lynx in the contiguous United States. As a result, we concluded in the final rule that the lack of Federal Land Management Plan guidance for conservation of lynx, and the potential for Plans to allow or direct actions that adversely affect lynx, were a significant threat to the contiguous United States lynx population.

As described in the final rule, the LCAS was developed to provide a consistent and effective approach to conserving lynx on Federal lands in the contiguous United States (Ruediger *et al.* 2000). The overall goals of the LCAS were to recommend lynx conservation measures, provide a basis for reviewing the adequacy with regard to lynx conservation of Forest Service and BLM land and resource management plans, and facilitate conferencing and consultation under section 7 of the Act, should the lynx be listed. The LCAS identifies an inclusive list of 17 potential risk factors for lynx or lynx habitat that may be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. For example, these risk factors include programs or practices that result in habitat conversion, habitat fragmentation, or obstruction to lynx movement; roads or winter recreation trails that facilitate access to historical lynx habitat by competitors; and fire suppression, which changes the vegetation mosaic maintained by natural disturbance processes. The risks identified in the LCAS are based on effects to either individual lynx, populations, both, or lynx habitat. Therefore, not all of the risks identified in the LCAS threaten lynx populations in the United States. For example, one risk factor identified for the Southern Rockies Region is accidental death from vehicle collisions. While this may result in the death of individual lynx, it is not considered to be a threat to lynx populations.

With the listing of the lynx in 2000, Federal agencies across the contiguous United States range of the lynx were required to consult with the Service on actions that may affect lynx. The LCAS assists Federal agencies in planning activities and projects in ways that benefit lynx or avoid adverse impacts to lynx or lynx habitat (Ruediger *et al.* 2000). The LCAS addresses potential risks including timber harvest and fire management. The LCAS ensures the appropriate mosaic of habitat is provided for lynx on Federal lands. For instance, both early successional forests and older forests with understory are important for lynx foraging habitat. The LCAS recommends that while timber harvest can result in early successional forests, harvest be limited to provide adequate amounts of older timber stands. Also, the LCAS recommends that no pre-commercial thinning occur in lynx habitat and no increase in designated or groomed snowmobile routes in lynx habitat. If projects are designed that fail to meet these or other recommendations, the biologists using the LCAS would arrive at an adverse effects determination for lynx. On National Forest lands such projects then would be deferred until Forest Plans are amended to conserve lynx.

A Conservation Agreement between the U.S. Forest Service and the Service (U.S. Forest Service and U.S. Fish and Wildlife Service in litt. 2000) and a similar Agreement between the BLM and the Service (Bureau of Land Management and U.S. Fish and Wildlife Service in litt. 2000) committed the U.S. Forest Service and BLM to use the LCAS in determining the effects of actions on lynx. The U.S. Forest Service further committed to deferring any actions not involving third parties that would adversely affect lynx, until such time as the Forest Plans were amended or revised to adequately conserve lynx. A programmatic biological opinion analyzed and confirmed the adequacy of the LCAS and its conservation measures to conserve lynx and concluded that Forest and BLM land management plans as implemented in accordance with the Conservation Agreements would not jeopardize the continued existence of lynx (U.S. Fish and Wildlife Service 2000). Currently, the ongoing adherence to the Conservation Agreements, the LCAS, and the programmatic biological opinion alleviates the effects of Federal land management activities identified in the final rule. However, amendment of National Forest and BLM land management plans to conserve lynx will be the strongest mechanism in ensuring lynx and lynx habitat are conserved on

National Forest and BLM lands for the long term.

As a result of Federal, State, and Tribal regulations and plans that conserve lynx, the threats to lynx from the inadequacy of existing regulatory mechanisms have been reduced. However, until Federal land management plans are amended to address lynx, we conclude that the threat to lynx because of the inadequacy of existing regulatory mechanisms continues to be moderate, albeit at a lower level than that described in the final rule.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Since the lynx was listed, our understanding of the vital role immigration of lynx from Canada plays in sustaining lynx in the contiguous United States has improved (Ray *et al.* 2002, Schwartz *et al.* 2002). In the final rule, we explained that connectivity of appropriate habitat types and cover provide travel corridors between habitat patches, thereby increasing the likelihood of successful lynx dispersal. It is essential that landscape connectivity between lynx habitats and populations in Canada and the contiguous United States be maintained. The final rule described the reduced ability for lynx from northern populations in Canada to cross the St. Lawrence River in southern Quebec and the St. Mary's River between Ontario and Michigan. At this time, we know of no natural or human-caused barriers that effectively prohibit movement of lynx between Canada and the directly adjacent regions of the contiguous United States (Northeast, Great Lakes, and Northern Rocky Mountains/Cascades) that support lynx habitats and populations. The threat to lynx because of the lack of a cohesive international strategy to maintain connectivity between habitats in Canada and the United States is low.

The final rule also noted that for most areas of the contiguous United States, we have no evidence that human-caused changes have significantly reduced the ability of lynx to disperse or have resulted in the loss of genetic interchange. The final rule explained that high traffic volume on roads that bisect suitable lynx habitat and associated suburban developments (such as from ski area expansion) may inhibit lynx movement and dispersal and may contribute to loss of habitat connectivity. Such situations occur in the Southern Rocky Mountains Region connecting cities, towns, and ski areas. The final rule explained that roads do not appear to be a significant direct cause of mortality of resident lynx, but that the majority of records of lynx mortalities from vehicle accidents are of recently translocated animals. No information currently exists to determine the level at which traffic volume or roadway design may influence or create an impediment to lynx movements. In local areas, lynx may be negatively influenced by high traffic volume on roads that bisect suitable lynx habitat and associated suburban developments that contribute to loss of habitat connectivity; however, we conclude the overall threat to lynx populations from high traffic volume on roads that bisect suitable lynx habitat and associated suburban developments is low, although locally in Colorado the risk is higher.

Isolated, small resident lynx populations, such as may have existed in the Southern Rocky Mountains and New York, are susceptible to genetic or demographic problems or random environmental events (such as a series of years when snow conditions are poor such that lynx cannot out-compete other predators). As described in ''Background'' above, we surmise that immigration is necessary to augment and maintain local lynx populations, especially in transitional habitats at the southern margins of lynx range. The natural distance and isolation of the Southern Rocky Mountain region and New York from source lynx populations may have severely reduced, if not entirely precluded the immigration that was likely necessary for potential resident lynx populations in these areas to sustain themselves. This same analysis does not apply to dispersers because we consider dispersers to be transient individual animals that are not a part of a population; they contribute little to the persistence of the metapopulation unless they augment or colonize resident lynx populations. We recognize that individual lynx may be affected by random environmental events. We expect that many dispersing lynx naturally do not survive because they are unable to find adequate food resources and because of the risks naturally inherent in long-distance movements.

The final rule describes that lynx show no evidence of being displaced by or avoidance of unpaved forest roads. We find no information demonstrating that forest roads negatively impact lynx (Roe *et al.* 2001) and, therefore do not consider forest roads to be a threat to lynx.

The final rule discussed the theory that suggested that increasing ease of human access into forests increased the vulnerability of lynx to intentional or unintentional shooting and trapping. We are concerned about the mortality of lynx through legal or illegal trapping and shooting; however, we have no information to indicate that the loss of these individuals negatively affects the overall ability of lynx populations to persist. We conclude the threat to the threat to lynx populations from incidental catch by trapping, snaring, or hunting is low (see Factor B above).

There continues to be no data on the role of competition between lynx and other species; therefore, we have only information on behavior and morphological adaptations of lynx and of potential competitors during both winter and snow-free seasons from which to gain some inferences about competition and whether it has an impact on lynx, as was thoroughly described in the final rule. Bobcats, mountain lions, and fishers are natural potential competitors or predators that coevolved with lynx. As described in the final rule, the coyote expanded its range into that of the lynx within the past century so any potential for competition between these two species may be considered unnatural. Deep snow provides lynx its competitive advantage. The final rule explained that human alteration of forests may create habitats that may be more suitable to potential lynx competitors. At this time there is no evidence that, if competition exists between lynx and any of these species, it exerts a population-level impact on lynx; therefore, we do not consider competition to be a threat to lynx.

Research scientists in the Missoula Wildlife Ecology unit of the Forest Service Rocky Mountain Research Station, in cooperation with the Northern Region of the Forest Service and the Superior National Forest in Minnesota, recently discovered evidence of hybridization between bobcats and Canada lynx. This is the first time hybridization has been reported in wild populations of these species. As a result of this finding, the Forest Service has conducted a DNA analysis of most of the lynx hair samples collected as part of the National Lynx Survey to help determine if hybridization has occurred elsewhere. So far, no additional instances of hybridization have been detected. This phenomenon may have implications for lynx conservation, but additional sampling and analysis are required before biologists will be able to fully understand the significance of the hybridization (D. Tippetts, U.S. Forest Service, in litt., 2003).

Despite the lack of evidence that competition with any species is negatively affecting lynx, the final rule explained the theory that ski and snowmobile trails and roads that are maintained for winter recreation and forest management create packed snow corridors that give other species, particularly coyotes, access to lynx winter habitat on all land ownerships. This theory has neither been proven or disproven at this time (Roe *et al.* 2000). On the basis of this theory, the LCAS provides that there be no net increase in groomed or designated over-the-snow routes and snowmobile play areas on Federal lands (Ruediger *et al.* 2000). The U.S. Forest Service and BLM are committed to adhering to their Conservation Agreements with the Service and the programmatic biological opinion on Forest and BLM land management plans that require the U.S. Forest Service and BLM to use the LCAS in determining the effects of actions on lynx (see Factor D). Because no evidence has been provided that packed snowtrails facilitate competition to a level that negatively affects lynx, we do not consider packed snowtrails to be a threat to lynx at this time.

During the public comment period on this remanded decision, we received information that predicted that if snow depths substantially decrease for a long period of time, lynx habitat will no longer exist in the Northeast (Hoving 2001). Hoving's (2001) model predicted that lynx were most likely to occur in areas with deep snow (greater than 268 cm (105 in) of mean annual snowfall). Hoving (2001) modeled possible consequences to the availability of lynx habitat in the Northeast as determined by snow depth. His predictions were only based on a comparison of average annual snow depths in the 1970s to those of the 1980s, not on models of future climate. Hoving (2001) acknowledged that the 1970s were unusually snowy whereas the 1980s was a period of relatively little snow. If average annual snow depth substantially decreases in the Northeast, as Hoving (2001) theorized could happen as a result of global warming, appropriate lynx habitat would be diminished and could be completely eliminated if appropriate climate conditions did not return. We conclude the potential for long-term reductions in snow depth because of climate change is speculative at this time and is not a threat to lynx.

TABLE 2

	Magnitude of threat			
	Northeast	Great Lakes	Southern Rockies	Northern Rockies/ Cascades
Factor A:				
Timber harvest regimes	Moderate	Low	Low	Low.
Fire suppression	Not a threat	Low	Low	Low.
Factor B:				
Legal lynx-targeted harvest	Not a threat	Not a threat	Not a threat	Not a threat.
Incidental harvest	Low	Low	Low	Low.
Factor C	Not a threat	Not a threat	Not a threat	Not a threat.
Factor D:				
Federal land management plan guidance.	Not a threat	Moderate	Moderate	Moderate.
Factor E:				
International strategy	Low	Low	Low	Low.
High volume traffic/development	Low	Low	Moderate	Low.
Forest roads	Not a threat	Not a threat	Not a threat	Not a threat.
Competition	Not a threat	Not a threat	Not a threat	Not a threat.
Global warming	Not a threat	Not a threat	Not a threat	Not a threat.

Finding

Based on the information provided in the final rule and the analysis provided above about the range of the lynx and the five factors contained in section 4(a)(1) of the ESA, we find that the lynx is not endangered because it is not in danger of extinction throughout a significant portion of its range. The way the lynx is affected varies across the range and there is not any particular activity that poses a threat consistently throughout the range of the species. Activities that may impact the lynx and its habitat are typically localized and even within a local area the impact an activity may have on lynx can vary depending on the quality and quantity of habitat in a local area or the size of the local resident population. In some portions of the range, lynx and its habitat face few or no threats (*e.g.*, in wilderness areas in the Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades).

Activities addressed in the factors contained in section 4(a)(1) are not of the magnitude or scope to require us to list the species as endangered. We base our finding that lynx is not endangered on the following factors:

(1) Lynx in the contiguous United States are, and historically have been, the southernmost segment of a larger metapopulation whose center is in Canada. Immigration from Canada is, and historically was, vital to sustaining lynx in the contiguous United States.

(2) In the contiguous United States, lynx habitat consists of the southern extensions of the boreal forest in the Northeast, Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades. The overall quantity and extent of boreal forest in these areas has not substantially changed in the past century because, for the most part, areas where lynx habitat occurs are still managed as forest lands, although there may have been a low level of encroachment in lynx habitat because of human development in some local areas. The quality of the boreal forest varies because it is a naturally dynamic ecosystem. To support lynx, the boreal forest must contain the mosaic of appropriate species composition, forest stand ages, and forest structure that provide snowshoe hare habitat for lynx foraging and lynx denning conditions.

(3) Lynx habitat occurs on lands owned and managed by Federal, Tribal, State, County, and private individuals and entities. Although we do not have information that allows us to accurately quantify how much habitat for lynx exists in the contiguous United States,

in the Northeast nearly all lynx habitat occurs on private lands. In the Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades, lynx habitat occurs primarily on Federal lands, although a portion does occur on State, Tribal, or private lands. Based on coarse vegetation maps, potential lynx habitat was roughly estimated to be 65,337 km^2 (25,227 mi^2) in the Northeast; 96,247 km^2 (37,161 mi^2) in the Great Lakes; 26,673 km^2 (10,298 mi^2) in the Southern Rocky Mountains; and 155,893 km^2 (60,191 mi^2) in the Northern Rocky Mountains/Cascades (U.S. Forest Service and Bureau of Land Management 1999).

(4) The current range of the lynx includes portions of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, Wisconsin, and Wyoming. The historic range of the lynx included these same States. The range of the lynx has not been dramatically reduced. We believe all historic habitat is still available to dispersing lynx except for very local areas where development has encroached on the boreal forest. A resident population does not exist in New York. We do not know if New York or the Southern Rockies ever supported resident lynx populations, but efforts at reintroduction of lynx in New York were unsuccessful and it would be premature to judge ongoing reintroduction efforts in Colorado (although reproduction has recently been documented).

(5) In the contiguous United States, the quality and quantity of the available habitat and its proximity to source populations influenced whether lynx historically were able to establish resident populations or occurred primarily as dispersers. The best scientific information suggests that historically only a few areas in the contiguous United States had lynx habitat of high enough quality and quantity to support resident populations and these are areas where resident populations currently continue to persist—northern Maine, northeastern Minnesota, western Montana, and north-central and northeastern Washington. Evidence of the continuing high quality habitat of these areas is indicated by the fact that currently there are many more lynx in these areas where resident populations exist (particularly in Maine and northeastern Minnesota) than we knew at the time we listed the species in 2000. Northern New Hampshire and northern Idaho currently have habitat conditions presumed capable of supporting lynx and are directly adjacent to resident populations; therefore we expect lynx occupy these areas.

The areas where resident populations occur are where habitat for lynx has consistently been of sufficient quality and quantity to support abundant snowshoe hare populations so that lynx are able to successfully produce kittens that are then recruited into the population. These habitats are of sufficient quality and quantity such that snowshoe hare populations at cyclic lows are still able to support a minimal number of lynx in the area, although we do not expect that lynx successfully reproduce when hare populations are low. Additionally, the habitat quality and quantity can support immigrants from Canada that colonize new areas or contribute to existing populations. In reality, in each region these areas are an artifact of the international border between Canada and the United States that artificially splits them into two pieces of a whole that exists primarily in Canada. This is most evident in Minnesota and Ontario—it appears sometimes the Ontario lynx population expands and occupies Minnesota and sometimes it contracts and lynx recede from Minnesota.

Historically, both Colorado and New York may have supported small resident lynx populations that may have been extirpated, although we are uncertain because historic records in these areas also may have been of dispersers that arrived during extremely high population cycles. In both Colorado and New York the last verified record of lynx was in 1973, a time that corresponds to an extreme cyclic population high. In both States there have been recent efforts to establish lynx populations. The attempt to establish a lynx population in New York in 1989–1991 was unsuccessful. The State of Colorado has undertaken an intensive effort to restore lynx in Colorado. Lynx have been released over the past 4 years into Colorado and reproduction was recently documented, but it is too early to determine if a population will be successfully established.

(6) In the remainder of the lynx range where some boreal forest exists in smaller patches, is of marginal quality, or is relatively isolated from source lynx populations, lynx occur as dispersers. We include boreal forest that supports only dispersers within the range of the lynx because of the possibility lynx could establish a local population and contribute to the persistence of the metapopulation. However, evidence of this is minimal. We consider these areas that only support dispersers within the range of the lynx—portions of Michigan, Oregon, Utah, Vermont, Wisconsin, and Wyoming.

(7) Areas that are outside of boreal forest types and that do not have cold winters with deep snow where dispersing lynx have sporadically been documented are not considered a part of the range of lynx because they do not contain the ecological conditions capable of supporting lynx. These areas include—Connecticut, Indiana, Iowa, Massachusetts, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, South Dakota, and Virginia.

(8) We conclude that large portions of range of the lynx in the Great Lakes, Southern Rocky Mountains, and Northern Rocky Mountains/Cascades are managed as non-developmental, such as designated wilderness areas, which is beneficial to lynx because it is managed to let natural ecological processes dominate. While there is some risk to lynx in these areas, these risks do not threaten lynx.

(9) We conclude there is a low threat to the contiguous United States lynx population because of the lack of a cohesive international strategy to maintain connectivity between habitats in Canada and the United States.

(10) We conclude there is a threat to the contiguous United States lynx population because of current effects of timber harvest and thinning and fire suppression on both non-Federal and Federal lands in the Northern Rocky Mountains/Cascades and Southern Rocky Mountains. We conclude that this threat is low. Although a majority of lynx habitat in these regions is on National Forest and BLM lands that are managed to conserve lynx, timber harvest regimes and fire suppression that may be locally detrimental to lynx and snowshoe hare habitat likely occurs on the limited amount of non-Federal lands that support lynx habitat in both the Northern Rocky Mountains/Cascades and Southern Rocky Mountains.

(11) We conclude that lynx habitat may be impacted because of changing timber harvest regimes on non-Federal lands in the Northeast. We conclude the threat of these activities is moderate, although there is the potential for more severe impacts if a natural mosaic of vegetation ages and forest structure that can support snowshoe hares and lynx is not maintained.

(12) We conclude that lynx may be impacted because of timber harvest and fire suppression on non-Federal and Federal lands in the Great Lakes. However, the impact of these activities is low because a majority of lynx habitat in this region is on National Forest lands, which are managed to conserve

lynx; however, on the non-Federal lands in this region timber harvest regimes and fire suppression could cause local impacts to lynx and snowshoe hare habitat.

(13) Until Federal land management plans are amended or revised to address lynx, we conclude that the threat to lynx because of the inadequacy of existing regulatory mechanisms is moderate, albeit at a lower level than that described in the final rule.

(14) We conclude there is a threat to the contiguous United States lynx population from incidental catch by trapping, snaring, or hunting. We conclude this threat is low, although there may be an increased risk to small, local populations from incidental catch depending on when it occurs in the population cycle; however, we have no information regarding how frequently incidental trapping, snaring, or hunting of lynx occurs.

(15) We conclude that existing regulatory mechanisms do not ameliorate all of the threats contained in Factors A, B, and E. However, some regulatory mechanisms do minimize the impact some activities may have on lynx, such as regulations that prohibit the trapping and hunting of lynx in most States. While Federal land management plans have yet to be amended to adequately address lynx, Federal land managers have taken significant steps to minimize the impacts projects may have on lynx and manage habitat to conserve lynx until land management plans are amended.

(16) We conclude lynx are impacted by high traffic volume on roads that bisect suitable lynx habitat and by associated suburban developments. However, we conclude this impact is low because this situation rarely occurs throughout the range of lynx except in the Southern Rocky Mountains; however there is currently no native lynx population in this area.

Lynx in the Northeast are not in danger of extinction. As it has historically, the boreal forest of the Northeast exists primarily in Maine. Lynx habitat in Maine is currently optimal and a resident, breeding population of lynx continues to exist. Maine's lynx population is currently much larger than we knew at the time of the final rule in 2000 and lynx habitat in Maine is directly connected to substantial lynx populations and habitat in southeastern Quebec and New Brunswick. Future timber harvest regimes in Maine have the potential to reduce the amount of snowshoe hare habitat, which in turn would reduce the size of the lynx population. There are no barriers to the movement of lynx across the Canada-U.S. border. Coyote snaring in Maine poses a risk of incidental mortality to local lynx populations. The potential exists for lynx to occur in New Hampshire because of its direct connectivity with Maine and we presume they currently occur there. Lynx in Vermont have always existed solely as dispersers because Vermont naturally supports very little lynx habitat.

Lynx in the Great Lakes are not in danger of extinction. Northeastern Minnesota has historically supported, and currently supports, a resident lynx population. Boreal forest in Minnesota is contiguous with occupied habitat in Ontario. Currently, there are many more lynx in northeastern Minnesota than we knew of at the time of the final rule in 2000. The majority of lynx habitat in the Great Lakes area is located in Minnesota and is managed as Federal lands. Threats to lynx on these lands are alleviated because these Federal agencies use the LCAS to guide activities in lynx habitat. Amendment or revision of Federal land management plans to adequately address lynx is necessary to provide long-term lynx conservation. On non-Federal lands there is a low threat to lynx because of the potential for certain forms of timber management and fire suppression to reduce snowshoe hare habitat. Wisconsin and Michigan naturally support only dispersing animals. We base this assessment on the lack of evidence of reproduction, lack of direct connectivity with suitable habitat, and limited amount of habitat in these States.

We conclude that the only portion of the range where the lynx faces possible extirpation includes the Southern Rocky Mountains (primarily Colorado) and New York, to the extent that either of these areas historically supported resident populations. We believe the loss of these resident populations was a natural process because these areas are naturally isolated from source lynx populations and habitats; therefore, the immigration necessary to augment and maintain local lynx populations was naturally precluded. However, the State of Colorado is currently undertaking an intense effort to restore lynx to Colorado. If lynx in these areas historically consisted only of dispersers that arrived during extremely high population cycles, we have no evidence that anything would prevent further such dispersal into these areas in the future. In addition, to use the words of another court quoted with approval of the court in this case, to the extent that these areas never supported a resident population (as opposed to dispersers), these areas are not ''areas in which [the lynx] is no longer viable but once was,'' because the lynx was never viable there. *Defenders of Wildlife* v. *Norton*, 258 F.3d 1136, 1145 (9th Cir. 2001) (quoted at 239 F.Supp.2d at 20). However, if we presume that both Colorado and New York historically supported resident populations, we find these areas do not constitute a significant portion of the range of lynx for the following reasons:

(1) Both areas constitute a comparatively small amount of the contiguous United States range of the lynx. Based on rough estimates, the Southern Rockies (primarily Colorado) supported only 8 percent of lynx habitat in the contiguous United States (U.S. Forest Service and Bureau of Land Management 1999); however, we know this proportion was somewhat underestimated because lynx habitat was overestimated in other regions. New York supports slightly more than 1 percent of lynx habitat just within the Northeast based on a current habitat model, and therefore only a small fraction of a percent of the habitat nationwide.

(2) The fact that historic records do not clearly demonstrate that these areas supported resident, breeding lynx populations indicates that these areas are of more marginal quality. Where habitat is abundant and of higher quality, there is evidence that resident, breeding lynx populations persist as indicated by high numbers of reliable lynx records over many years and evidence of reproduction. We do not have such information for either New York or the Southern Rocky Mountains. In fact, an effort to establish a lynx population in New York during 1989–1991 failed, potentially an indication that the habitat was not adequate to support a lynx population. Reproduction has recently been documented in an intensive lynx reestablishment effort currently underway in Colorado but it remains to be seen if the habitat is adequate to support a lynx population for the long-term without such intensive human intervention.

(3) Habitat appears marginal in the Southern Rocky Mountains and New York. In the Southern Rocky Mountains lynx habitat occurs at high elevations and, therefore, is naturally highly fragmented by topography and drier south- and west-facing slopes into island-like patches rather than expansive, contiguous blocks. The amount of potential lynx habitat in New York is estimated to be an area only slightly larger than the average home range of a single male lynx. Additionally, the boreal forest in New

York is protected as Adirondack State Park where much of the forest is mature and does not have the understory necessary to support a snowshoe hare population capable of sustaining lynx.

(4) Both of these areas are a relatively long distance and naturally more isolated from other lynx populations, substantially reducing the potential for lynx from northern populations to augment or colonize these areas or, alternatively, reducing the ability of lynx from these areas to have augmented or colonized other lynx habitats. Therefore the contribution of these areas to the persistence of lynx in the contiguous United States is presumably minimal.

We conclude that the contiguous United States DPS of the lynx is not in danger of extinction throughout a significant portion of its range within the Northeast, Great Lakes, or Southern Rockies and therefore does not warrant reclassification to ''endangered'' status in all or a significant portion of its range within these areas. As a result the Canada lynx will remain listed as threatened in Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, Wisconsin, and Wyoming.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Montana Field Office (see **ADDRESSES**).

Author

The author of this document is Lori Nordstrom, Montana Field Office, Helena, Montana.

Dated: June 24, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–16664 Filed 7–2–03; 8:45 am]

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Federal Register

Thursday,
July 3, 2003

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 30 and 52
Federal Acquisition Regulation; Cost Accounting Standards Administration; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAR Case 1999–025]

RIN 9000–AI70

Federal Acquisition Regulation; Cost Accounting Standards Administration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments, and notice of a public meeting.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to delineate the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice.

DATES: *Comment date:* Interested parties should submit comments in writing on or before September 2, 2003 to be considered in the formulation of a final rule.

Public meeting: A public meeting will be held on August 5, 2003, at the address shown below from 9 a.m. to 5 p.m., local time.

ADDRESSES: *Comments:* Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.1999–025@gsa.gov.*

Please submit comments only and cite FAR case 1999–025 in all correspondence related to this case.

Public meeting: The public meeting will be held at—Crystal Mall 3, 1931 Jefferson Davis Highway, Room C–43, Arlington, VA, 22202.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAR case 1999–025.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule delineates the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or uses a noncompliant practice. In conjunction with the proposed rule being published today, a public meeting will be held on August 5, 2003. The public meeting is intended to provide the purpose and rationale for each paragraph of the proposed rule. The public meeting will also offer participants an opportunity to ask questions regarding the content of the proposed rule. The specific date, time, and location of the meeting will also be posted at *http://www.acq.osd.mil/dp/cpf* within three days of the date of this publication.

FAR Part 30, Cost Accounting Standards Administration, describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations to negotiated contracts and subcontracts. The CASB's rules, regulations, and Cost Accounting Standards (CAS) are codified at 48 CFR Chapter 99 (FAR Appendix). Negotiated contracts not exempt in accordance with 48 CFR 9903.201–1(b) are subject to CAS.

A proposed FAR rule was published in the **Federal Register** at 65 FR 20854, April 18, 2000. The rule delineated the entire cost-impact process the Government and the contractor shall follow when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. Nine responders submitted public comments. Additional comments were provided by the public at a series of public meetings that were held on August 2, 2000, September 26, 2000, and October 17, 2000.

The Councils considered the written comments received in response to the proposed rule and the comments provided during the public meetings. As a result, the Councils are currently proposing a rule that differs significantly from the proposed rule that was published on April 18, 2000. The main differences between the two proposed FAR rules are listed below.

1. *CASB final rule.* This second proposed rule incorporates changes based on a CASB final rule, Changes in Cost Accounting Practices, which was published in the **Federal Register** at 65 FR 37469, June 14, 2000. These FAR changes include the addition of—

a. Definitions for required, unilateral, and desirable changes; and

b. CASB language excluding cost accounting practice changes related to external restructuring from contract price and cost adjustments;

2. *Offsets.* This second proposed rule eliminates the term ''offset'' to avoid potential confusion regarding the term, but includes the effect of offsets in the cost impact calculation process by separating the calculation of the cost impact from the resolution of the cost impact;

3. *Materiality.* This second proposed rule clarifies that the cognizant Federal agency official (CFAO) may make a materiality determination at any point in the cost impact process, including before requesting a general dollar magnitude (GDM) proposal.

4. *Desirable change.* This second proposed rule provides additional guidance regarding what constitutes a desirable change.

5. *Form and content of the GDM and detailed cost impact (DCI) proposals.* This second proposed rule revises the requirements regarding the form and content of both the GDM and DCI proposals to provide greater flexibility to apply practical solutions to the cost impact process and to reduce the administrative effort. This includes revising the requirements of the—

a. GDM proposal so that broad based data may be used as the basis for the GDM proposal; and

b. DCI proposal to provide flexibility for the CFAO to not require individual data on all contracts, but to project the cost impact on larger contracts to the remaining contract universe.

6. *Contract price adjustments.* The proposed rule provides for the CFAO to resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method. In an ideal world, the CFAO would adjust all contracts so that each and every dollar of the cost impact is perfectly re-allocated to each and every affected contract. However, the Councils recognize that, in many instances, adjusting all contracts is not practical or feasible. The proposed rule, therefore, provides the CFAO the flexibility to resolve the cost impact using methods other than adjusting every contract, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO had adjusted all the contracts.

7. *Responsibilities and roles of the CFAO.* This second proposed rule requires the CFAO to execute contract modifications in lieu of the contracting officers at the agencies that awarded the contracts; and

8. *New solicitation provision.* This second proposed rule adds a provision

that requires a contractor to indicate if the contract award will result in a cost accounting practice change and, if so, to prepare a pricing proposal using the changed practice.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed 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 contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201–1(b)(3). An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 30 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite FAR case 1999–025 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose 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 Parts 30 and 52

Government procurement.

Dated: June 26, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 30 and 52 as set forth below:

1. The authority citation for 48 CFR parts 30 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Add section 30.001 to read as follows:

30.001 Definitions.

As used in this part—

Affected CAS-covered contract or subcontract means a contract or subcontract subject to Cost Accounting Standards (CAS) rules and regulations for which a contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO) means the contracting officer assigned by the cognizant Federal agency to administer CAS.

Desirable change means a unilateral change to a contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.202, 16.203, and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (subpart 16.6).

Flexibly priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (subpart 16.6).

Noncompliance means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

Required change means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

Unilateral change means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

3. Amend section 30.201–3 by adding paragraph (c) to read as follows:

30.201–3 Solicitation provisions.

* * * * *

(c) Insert the provision at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes, in solicitations for contracts subject to CAS as specified in 48 CFR 9903.201 (FAR Appendix).

4. Amend section 30.202–6 by revising paragraph (b); removing from paragraph (c) the word ''cognizant''; and by revising paragraph (d) to read as follows:

30.202–6 Responsibilities.

* * * * *

(b) The contracting officer shall not award a CAS-covered contract until the cognizant Federal agency official (CFAO) has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the agency head, on a nondelegable basis, authorizes award without obtaining submission of the required Disclosure Statement (see 48 CFR 9903.202–2). In this event, the CFAO shall make a determination of adequacy as soon as possible after the award.

* * * * *

(d) The CFAO is responsible for issuing determinations of adequacy and compliance of the Disclosure Statement.

5. Revise section 30.202–7 to read as follows:

30.202–7 Determinations.

(a) *Adequacy determination.* (1) As prescribed by 48 CFR 9903.202–6 (FAR Appendix), the cognizant auditor shall—

(i) Conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete; and

(ii) Report the results to the CFAO.

(2) The CFAO shall determine if the Disclosure Statement adequately describes the contractor's cost accounting practices. Also, the CFAO shall—

(i) If the Disclosure Statement is adequate, notify the contractor in writing, and provide a copy to the auditor with a copy to the contracting officer if the proposal triggers submission of a Disclosure Statement. The notice of adequacy shall state that—

(A) The disclosed practices are adequately described and the CFAO currently is not aware of any additional practices that should be disclosed;

(B) The notice is not a determination that all cost accounting practices were disclosed; and

(C) The contractor shall not consider a disclosed practice, by virtue of such disclosure, an approved practice for estimating proposals or accumulating and reporting contract and subcontract cost data; or

(ii) If the Disclosure Statement is inadequate, notify the contractor of the inadequacies and request a revised Disclosure Statement.

(3) Generally, the CFAO should furnish the contractor notification of adequacy or inadequacy within 30 days after the CFAO receives the Disclosure Statement.

(b) *Compliance determination.* (1) After the notification of adequacy, the auditor shall—

(i) Conduct a detailed compliance review to ascertain whether or not the disclosed practices comply with CAS and part 31, as applicable; and

(ii) Advise the CFAO of the results.

(2) The CFAO shall make a determination of compliance or take action regarding a report of alleged noncompliance in accordance with 30.605(b).

6. Revise Subpart 30.6 to read as follows:

Subpart 30.6—CAS Administration

Sec.

30.601 Responsibility.
30.602 Materiality.
30.603 Changes to disclosed or established cost accounting practices.
30.603–1 Required changes.
30.603–2 Unilateral and desirable changes.
30.604 Processing changes to disclosed or established cost accounting practices.
30.605 Processing noncompliances.
30.606 Resolving cost impacts.
30.607 Subcontract administration.

30.601 Responsibility.

(a) The CFAO shall perform CAS administration for all contracts and subcontracts in a business unit, even when the contracting officer retains other administration functions. The CFAO shall make all CAS-related determinations and findings (see subpart 1.7) for all CAS-covered contracts and subcontracts, including—

(1) Whether a change in cost accounting practice or noncompliance has occurred; and

(2) If a change in cost accounting practice or noncompliance has occurred, how any resulting cost impacts are resolved.

(b) Within 30 days after the award of any new contract subject to CAS, the contracting officer making the award shall request the CFAO to perform administration for CAS matters (see subpart 42.2). For subcontract awards, the contractor awarding the subcontract shall follow the procedures at 52.230–6(l).

30.602 Materiality.

(a) In determining materiality, the CFAO shall use the criteria in 48 CFR 9903.305 (FAR Appendix).

(b) A CFAO determination of materiality—

(1) May be made before or after a general dollar magnitude proposal has been submitted, depending on the particular facts and circumstances; and

(2) Shall be based on adequate documentation.

(c) When the amount involved is immaterial, the CFAO shall—

(1) Make no contract adjustments and conclude the cost impact process; and

(2) In the case of noncompliance issues, inform the contractor that—

(i) The noncompliance should be corrected; and

(ii) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the cost impact become material in the future.

(d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall adjust the contract or use another suitable method (see 30.606).

30.603 Changes to disclosed or established cost accounting practices.

Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining materiality, the ACO shall use the criteria in 48 CFR 9903.305 (FAR Appendix). The ACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the ACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the ACO shall inform the contractor that—

(a) The Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material; and

(b) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

30.603–1 Required changes.

(a) *General.* Offerors shall state whether or not the award of a contract would require a change to an established cost accounting practice affecting existing contracts and subcontracts (see 52.230–1). The contracting officer shall notify the CFAO if the offeror states that a change in cost accounting practice would be required.

(b) *CFAO responsibilities.* Prior to making an equitable adjustment under the applicable paragraph(s) that address a required change at 52.230–2, Cost Accounting Standards; 52.230–3, Disclosure and Consistency of Cost Accounting Practices; or 52.230–5, Cost Accounting Standards—Educational Institution, the CFAO shall determine that—

(1) The cost accounting practice change is required to comply with a CAS, or a modification or interpretation thereof, that subsequently became applicable to one or more contracts or subcontracts; or

(2) The former cost accounting practice was in compliance with applicable CAS and the change is necessary to remain in compliance.

(c) *Notice and proposal preparation.* (1) When the award of a contract would require a change to an established cost accounting practice, the provision at 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes, requires the offeror to—

(i) Prepare the contract pricing proposal in response to the solicitation using the changed cost accounting practice for the period of performance for which the practice will be used; and

(ii) Submit a description of the changed cost accounting practice to the contracting officer and the CFAO as pricing support for the proposal.

(2) When a change is required to remain in compliance (for reasons other than a contract award) or to comply with a new or modified standard, the clause at 52.230–6, Administration of

Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor assertion that the cost impact of the change is immaterial.

(d) *Equitable adjustments for new or modified standards.* (1) Required changes made to comply with new or modified standards may require equitable adjustments, but only to those contracts awarded before the effective date of the new or modified standard (see 52.230–2, 52.230–3, or 52.230–5).

(2) When a contractor elects to implement a required change to comply with a new or modified standard prior to the applicability date of the standard, the CFAO shall administer the change as a unilateral change (see 30.603–2). Contractors shall not receive an equitable adjustment that will result in increased costs in the aggregate paid by the Government prior to the applicability date unless the CFAO determines that the unilateral change is a desirable change.

30.603–2 Unilateral and desirable changes.

(a) *Unilateral changes.* (1) The contractor may unilaterally change its disclosed or established cost accounting practices, but the Government shall not pay any increased cost, in the aggregate, as a result of the unilateral change.

(2) Prior to making any contract price or cost adjustments under the applicable paragraph(s) of the clause addressing a unilateral change at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine that—

(i) The contemplated contract price or cost adjustments will protect the Government from the payment of the estimated increased costs, in the aggregate; and

(ii) The net effect of the contemplated adjustments will not result in the recovery of more than the increased costs paid by the Government, in the aggregate.

(b) *Desirable changes.* (1) Prior to taking action under the applicable paragraph(s) addressing a desirable change at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine the change is a desirable change and not detrimental to the interests of the Government.

(2) Until the CFAO has determined a change to a cost accounting practice is a desirable change, the change is a unilateral change.

(3) Some factors to consider in determining if a change is a desirable change include, but are not limited to, whether—

(i) The contractor must change the cost accounting practices it uses for Government contract and subcontract costing purposes to remain in compliance with the provisions of part 31;

(ii) The contractor is initiating management actions directly associated with the change that will result in cost savings for segments with CAS-covered contracts and subcontracts over a period for which forward pricing rates are developed or five years, whichever is shorter, and the cost savings are reflected in the forward pricing rates; and

(iii) Funds are available if the determination would necessitate an upward adjustment of contract cost or price.

(c) *Notice and proposal preparation.* (1) When a contractor makes a unilateral change, the clause at 52.230–6, Administration of Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor assertion that the cost impact of the change is immaterial.

(2) If a contractor implements the change in cost accounting practice without submitting the notice as required in paragraph (c)(1) of this subsection, the CFAO may determine the change a failure to follow a cost accounting practice consistently and process it as a noncompliance in accordance with 30.605.

(d) *Retroactive changes.* (1) If a contractor requests that a unilateral change be retroactive, the contractor shall submit supporting rationale.

(2) The CFAO shall promptly evaluate the contractor's request and shall, as soon as practical, notify the contractor in writing whether the request is or is not approved.

(3) The CFAO shall not approve a date for the retroactive change that is before the beginning of the contractor's fiscal year in which the request is made.

(e) *Contractor accounting changes due to external restructuring activities.* The requirements for contract price and cost adjustments do not apply to compliant cost accounting practice changes that are directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325. However, the disclosure requirements in 30.603–2 shall be followed.

30.604 Processing changes to disclosed or established cost accounting practices.

(a) *Scope.* This section applies to required, unilateral, and desirable changes in cost accounting practices.

(b) *Procedures.* Upon receipt of the contractor's notification and description of the change in cost accounting practice, the CFAO, with the assistance of the auditor, should review the proposed change concurrently for adequacy and compliance. The CFAO shall—

(1) If the description of the change is both adequate and compliant, notify the contractor in writing and—

(i) For required or unilateral changes (except those requested to be determined desirable changes), request the contractor submit a general dollar magnitude (GDM) proposal by a specified date, unless the CFAO determines the cost impact is immaterial; or

(ii) For unilateral changes that the contractor requests to be determined desirable changes, inform the contractor that the request shall include supporting rationale and—

(A) For any request based on the criteria in 30.603–2(b)(3)(ii), the data necessary to demonstrate the required cost savings; or

(B) For any request other than those based on the criteria in 30.603–2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change;

(2) If the description of the change is inadequate, request a revised description of the new cost accounting practice; and

(3) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.

(c) *Evaluating requests for desirable changes.* (1) When a contractor requests a unilateral change be determined a desirable change, the CFAO shall promptly evaluate the contractor's request and, as soon as practical, notify the contractor in writing whether the change is a desirable change or the request is denied.

(2) If the CFAO determines the change is a desirable change, the CFAO shall negotiate any cost or price adjustments that may be needed to resolve the cost impact (see 30.606).

(3) If the request is denied, the change is a unilateral change and shall be processed accordingly.

(d) *General dollar magnitude proposal.* The GDM proposal–

(1) Provides information to the CFAO on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous cost accounting practice; and

(2) Assists the CFAO in determining whether individual contract price or cost adjustments are required.

(e) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly priced contracts and subcontracts.

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) The total increase or decrease in cost accumulations by executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs paid by the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(f) *General dollar magnitude proposal evaluation.* The CFAO, with the assistance of the auditor, shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall notify the contractor in writing and conclude the cost impact process with no contract adjustments. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request that the contractor submit a revised GDM proposal by a specified date with specific additional data needed to resolve the cost impact (*e.g.*, an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in cost accumulations); or

(2) Request that the contractor submit a detailed cost-impact (DCI) proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(g) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) Shall show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts exceeding a specified amount; and

(ii) Estimate the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (g)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the requirements at paragraphs (e)(3)(i) and (ii) of this section; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year(s) in which the costs were incurred (*i.e.*, whether or not the final indirect cost rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) Compute the increase or decrease in cost accumulations for affected CAS-covered contracts and subcontracts based on the difference between—

(i) The estimated cost to complete using the current practice; and

(ii) The estimated cost to complete using the changed practice;

(4) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(A) When the amount in paragraph (h)(3)(i) exceeds the amount in paragraph (h)(3)(ii) of this section, the difference is increased cost to the Government.

(B) When the amount in paragraph (h)(3)(i) is less than the amount in paragraph (h)(3)(ii) of this section, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost paid by the Government for flexibly priced contracts and subcontracts as follows:

(A) When the amount in paragraph (h)(3)(i) exceeds the amount in paragraph (h)(3)(ii) of this section, the difference is decreased cost to the Government;

(B) When the amount in paragraph (h)(3)(i) is less than the amount in paragraph (h)(3)(ii) of this section, the difference is increased cost to the Government; and

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated.

(iv) Calculate the increased or decreased cost to the Government in the aggregate by adding—

(A) The increased or decreased costs to the Government for fixed-price contracts and subcontracts;

(B) The increased or decreased costs to the Government for flexibly priced contracts and subcontracts; and

(C) The total increase or decrease in contract and subcontract incentives, fees, and profits computed in paragraph (h)(4)(iii) of this section; and

(5) For equitable adjustments for required changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, including target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, including target prices and cost ceilings.

(i) *Remedies.* If the contractor does not submit the accounting change description or the proposals required in paragraph (d) or (g) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall—

(1) With the assistance of the auditor, estimate the general dollar magnitude of the cost impact on affected CAS-covered contracts and subcontracts; and

(2) Take one or both of the following actions:

(i) Withhold an amount not to exceed 10 percent of each subsequent payment related to the contractor's affected CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact), until the contractor furnishes the required information.

(ii) Issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

30.605 Processing noncompliances.

(a) *General.* Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing noncompliance at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine that—

(1) The contemplated contract price or cost adjustments will protect the Government from the payment of increased costs, in the aggregate; and

(2) The net effect of the contemplated contract price or cost adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate.

(3) The net effect of any invoice adjustments made to correct an estimating noncompliance will not result in the recovery of more than the increased cost paid by the Government, in the aggregate.

(4) The net effect of any interim and final voucher billing adjustments made to correct a cost accumulation noncompliance will not result in the recovery of more than the increased cost pay by the Government, in the aggregate.

(b) *Notice and determination.* (1) Within 15 days of receiving a report of alleged noncompliance from the auditor, the CFAO shall

(i) Notify the auditor that the CFAO disagrees with the alleged noncompliance; or

(ii) Issue a notice of potential noncompliance to the contractor and provide a copy to the auditor.

(2) The notice of potential noncompliance shall—

(i) Notify the contractor in writing of the exact nature of the noncompliance; and

(ii) Allow the contractor 60 days or other mutually agreeable date to—

(A) Agree or submit reasons why the contractor considers the existing practices to be in compliance; and

(B) Submit rationale to support any assertion that the cost impact of the noncompliance is immaterial.

(3) The CFAO shall—

(i) If applicable, review the reasons why the contractor considers the existing practices to be compliant or the cost impact to be immaterial;

(ii) Make a determination of compliance or noncompliance consistent with 1.704; and

(iii) Notify the contractor and the auditor in writing of the determination of compliance or noncompliance and the basis for the determination.

(4) If the CFAO makes a determination of noncompliance, the CFAO shall follow the procedures in paragraphs (c) through (h) of this section, as appropriate, unless the CFAO also determines the cost impact is immaterial. If immaterial, the CFAO shall—

(i) Inform the contractor in writing that—

(A) The noncompliance should be corrected; and

(B) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the noncompliance become material in the future; and

(ii) Conclude the cost impact process with no contract adjustments.

(c) *Correcting noncompliances.* (1) The clause at 52.230–6 requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance within 60 days after the earlier of—

(i) Agreement with the CFAO that there is a noncompliance; or

(ii) Notification by the CFAO of a determination of noncompliance.

(2) The CFAO, with the assistance of the auditor, should review the proposed change to correct the noncompliance concurrently for adequacy and compliance (see 30.202–7). The CFAO shall—

(i) When the description of the change is both adequate and compliant—

(A) Notify the contractor in writing;

(B) Request that the contractor submit by a specified date a general dollar magnitude (GDM) proposal, unless the CFAO determines the cost impact is immaterial; and

(C) Follow the procedures at paragraph (b)(4) of this section if the CFAO determines the cost impact is immaterial.

(ii) If the description of the change is inadequate, request a revised description of the new cost accounting practice.

(iii) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.

(d) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in contract and subcontract price or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts affected by the noncompliance.

(ii) When the noncompliance involves cost accumulation:

(A) For purposes of computing increased cost in the aggregate, the change in indirect rates multiplied by the applicable base for flexibly priced contracts and subcontracts.

(B) For purposes of determining interest, the change in indirect costs multiplied by the applicable base for flexibly priced and fixed-price contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in contract and subcontract prices and cost accumulations;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) The total increase or decrease in contract and subcontract prices and cost accumulations, as applicable, by executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(ii) The increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance. The total overpayments and underpayments shall be broken down by quarter, unless each of the quarterly amounts billed during the period of noncompliance were approximately equal; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(e) *General dollar magnitude proposal evaluation.* The CFAO shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall follow the requirements in paragraph (b)(4) of this section. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request the contractor submit a revised GDM proposal by a specified date, with specific additional data needed to resolve the cost impact (*e.g.*, an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in contract and subcontract price and cost accumulations); or

(2) Request that the contractor submit a detailed cost-impact (DCI) proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(f) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section.

(2) Shall show the increase or decrease in price and cost accumulations, as applicable for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (f)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the information in paragraph (d)(3) of this section; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(g) *Interest.* The CFAO shall—

(1) Separately identify interest on any increased cost paid, in the aggregate, as a result of the noncompliance;

(2) Compute simple interest from the date of overpayment to the time the adjustment is effected in accordance with 26 U.S.C. 6621(a)(2), as follows:

(i) If the quarterly amounts billed during the period of noncompliance were approximately the same, use the average interest rate and midpoint for the period of the noncompliance as the baseline for the computation of interest.

(ii) If the quarterly amounts billed during the period of noncompliance were not approximately the same, use an alternate method that computes simple interest from the date of overpayment to the time the adjustment is effected.

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect cost rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) For noncompliances that involve estimating costs, compute the impact on contract and subcontract price for flexibly priced and fixed-price contracts and subcontracts (the computation for the flexibly priced contracts is used only for purposes of determining any necessary adjustments to fee and incentives), based on the difference between—

(i) The negotiated contract or subcontract price; and

(ii) What the negotiated price would have been had the contractor used a compliant practice;

(4) For noncompliances that involve accumulating costs, compute the impact on cost accumulations for flexibly priced and fixed-price contracts and subcontracts (the computation for the fixed-priced contracts is used only for purposes of determining interest on costs paid), based on the difference between—

(i) The costs that were accumulated under the noncompliant practice; and

(ii) The costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice);

(5) For purposes of determining increased costs in the aggregate, for noncompliances that involve estimating cots, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the amount in paragraph (h)(3)(i) exceeds the amount in paragraph (h)(3)(ii), the difference is increased cost to the Government.

(ii) When the amount in paragraph (h)(3)(i) is less than the amount in paragraph (h)(3)(ii), the difference is decreased cost to the Government;

(6) For purposes of determining increased costs in the aggregate, for noncompliances that involve cost accumulation, determine the increased or decreased cost to the Government for flexibly priced contracts and subcontracts as follows:

(i) When the amount in paragraph (h)(4)(i) exceeds the amount in paragraph (h)(4)(ii), the difference is increased cost to the Government.

(ii) When the amount in paragraph (h)(4)(i) is less than the amount in paragraph (h)(4)(ii), the difference is decreased cost to the Government; and

(7) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the contractor used a compliant practice;

(8) For noncompliances that involve estimating costs, calculate the increased or decreased cost to the Government, in the aggregate, by adding—

(i) The increased or decreased costs to the Government for fixed-price contracts and subcontracts; and

(ii) The total increase or decrease in contract and subcontract incentives, fees, and profits computed in paragraph (h)(7) of this section; and

(9) For noncompliances that involve accumulating costs, calculate the increased or decreased cost to the Government, in the aggregate, by adding—

(i) The increased or decreased costs to the Government for flexibly priced contracts and subcontracts, and

(ii) The total increase or decrease in contract and subcontract incentives, fees, and profits computed in paragraph (h)(7) of this section.

(i) *Remedies.* If the contractor does not correct the noncompliance or submit the proposal required in paragraph (d) or (f) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall follow the procedures at 30.604(i).

30.606 Resolving cost impacts.

(a) *General.* (1) The CFAO shall coordinate with the affected contracting officers before negotiating and resolving the cost impact when the estimated cost impact on any of their contracts is at least $100,000. However, the CFAO has the sole authority for negotiating and resolving the cost impact.

(2) The CFAO may resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several

but not all contracts, all contracts, or any other suitable method.

(3) In resolving the cost impact, the CFAO—

(i) May combine the cost impacts of several changes in cost accounting practices within a segment, intermediate office, or home office only if the changes are implemented in the same fiscal year;

(ii) May combine the cost impacts of two or more segments (*e.g.*, a change that affects the flow of costs between segments or the implementation of a common cost accounting practice for two or more segments);

(iii) Shall not combine the cost impact of a change in cost accounting practice with the cost impact of a noncompliant practice; and

(iv) Shall not combine the cost impact of one noncompliant practice with the cost impact of another noncompliant practice.

(v) Shall not combine the costs impacts attributable to different categories of compliant changes, *i.e.*, required, unilateral, or desirable changes.

(4) For desirable changes, the CFAO should consider the estimated cost impact of associated management actions on contract costs in resolving the cost impact.

(b) *Negotiations.* The CFAO shall—

(1) Negotiate and resolve the cost impact on behalf of all Government agencies; and

(2) At the conclusion of negotiations, prepare a negotiation memorandum and send copies to the auditor and affected contracting officers.

(c) *Contract adjustments.* (1) The CFAO may adjust some or all contracts with a material cost impact, subject to the provisions in paragraphs (c)(2) through (c)(6) of this section.

(2) In selecting the contract or contracts to be adjusted, the CFAO should assure, to the maximum extent practical and subject to the provisions in paragraphs (c)(3) through (c)(6) of this section, that the adjustments reflect a *pro rata* share of the cost impact based on the ratio of the cost impact of each executive agency to the total cost impact.

(3) For unilateral changes, the CFAO shall—

(i) To the maximum extent practical, not adjust the price upward for fixed-price contracts;

(ii) If contract adjustments are made, preclude payment of aggregate increased costs by taking one or both of the following actions—

(A) Reduce the contract price on fixed-price contracts.

(B) Disallow costs on flexibly priced contracts; and

(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including cost ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments on affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate value of all contracts affected by a unilateral change shall not be increased (9903.201–6(b)).

(4) For noncompliances that involve estimating costs, the CFAO—

(i) Shall, to the extent practical, not adjust the price upward for fixed-price contracts;

(ii) Shall, if contract adjustments are made, preclude payment of aggregate increased costs by reducing the contract price on fixed-price contracts.

(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate value of all contracts affected by a noncompliance that involves estimating costs shall not be increased (9903.201–6(d)).

(iv) Shall require the contractor to correct the noncompliance, *i.e.*, ensure that compliant cost accounting practices will now be utilized to estimate proposed contract costs.

(v) Shall require the contractor to adjust any invoices that were paid based on noncompliant contract prices to reflect the adjusted contract prices, after any contract price adjustments are made to resolve the noncompliance.

(5) For noncompliances that involve cost accumulation, the CFAO—

(i) Shall require the contractor to—

(A) Correct noncompliant contract cost accumulations in the contractor's cost accounting records for affected contracts to reflect compliant contract cost accumulations; and

(B) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the difference between the costs paid using the noncompliant practice and the costs that should have been paid using the compliant practice; or

(ii) Shall adjust contract prices. In adjusting contract prices, the CFAO shall preclude payment of aggregate increased costs by disallowing costs on flexibly priced contracts.

(A) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate value of all contracts affected by a noncompliance that involves cost accumulation shall not be increased (9903.201–6(d)).

(B) Shall require the contractor to—

(*1*) Correct contract cost accumulations in the contractor's cost accounting records to reflect the contract price adjustments; and

(*2*) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the contract price adjustments.

(6) When contract adjustments are made, the CFAO shall—

(i) Execute the bilateral modifications if the CFAO and contractor agree on the amount of the cost impact and the adjustments (see 42.302(a)(11)(iv)); or

(ii) When the CFAO and contractor do not agree on the amount of the cost impact or the contract adjustments, issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s).

(d) *Alternate methods.* (1) The CFAO may use an alternate method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternate method and the contracting parties agree on the use of that alternate method;

(2) The CFAO may not use an alternate method for contracts when application of the alternate method to contracts would result in—

(i) An underrecovery of monies by the Government (*e.g.*, due to cost overruns); or

(ii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive type contracts.

(3) When using an alternate method that excludes the costs from an indirect cost pool, the CFAO shall—

(i) Apply such exclusion only to the determination of final indirect cost rates (see 42.705); and

(ii) Adjust the exclusion to reflect the Government participation rate for flexibly priced contracts and subcontracts. For example, if there are aggregate increased costs to the Government of $100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation rate of 50 percent for flexibly priced contracts and

subcontracts, the contractor shall exclude $200,000 from the indirect cost pool ($100,000/50% = $200,000).

30.607 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the CFAO for the subcontractor shall furnish a copy of the negotiation memorandum or the determination to the CFAO for the contractor of the next higher-tier subcontractor. The CFAO of the contractor or the next higher-tier subcontractor shall not change the determination of the CFAO for the lower-tier subcontractor. If the subcontractor refuses to submit a GDM or DCI proposal, remedies are made at the prime contractor level.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Revise section 52.230–6 to read as follows:

52.230–6 Administration of Cost Accounting Standards.

As prescribed in 30.201–4(d)(1), insert the following clause:

Administration of Cost Accounting Standards (Date)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

(a) *Definitions.* As used in this clause—

Affected CAS-covered contract or subcontract means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO) means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

Desirable change means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

Flexibly priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at FAR 16.204 and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

Noncompliance means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

Required change means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

Unilateral change means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change (including revisions to the Disclosure Statement, if applicable) and any assertion that the cost impact of the change is immaterial as outlined in paragraphs (b)(1) through (3) of this clause. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230–2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230–2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230–5, submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraphs (a)(4)(ii) or (iii) of the clauses at FAR 52.230–2 and FAR 52.230–5; or with paragraph (a)(3) of the clause at FAR 52.230–3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date, submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230–2 and FAR 52.230–5; or by paragraph (a)(4) of the clause at FAR 52.230–3)—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause;

(2) A detailed cost impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603–2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603–2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract, unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraphs (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect cost rates have been established).

(2) Compute the increase or decrease in cost accumulations for affected CAS-covered contracts and subcontracts based on the difference between—

(i) The estimated cost to complete using the current practice; and

(ii) The estimated cost to complete using the changed practice.

(3) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(A) When the amount in paragraph (f)(2)(i) exceeds the amount in paragraph (f)(2)(ii) of this clause, the difference is increased cost to the Government.

(B) When the amount in paragraph (f)(2)(i) is less than the amount in paragraph (f)(2)(ii) of this clause, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for flexibly priced contracts and subcontracts as follows:

(A) When the amount in paragraph (f)(2)(i) exceeds the amount in paragraph (f)(2)(ii) of this clause, the difference is decreased cost to the Government.

(B) When the amount in paragraph (f)(2)(i) is less than the amount in paragraph (f)(2)(ii) of this clause, the difference is increased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased or decreased cost to the Government in the aggregate by adding—

(A) The increased or decreased cost to the Government for fixed-price contracts and subcontracts;

(B) The increased or decreased cost to the Government for flexibly priced contracts and subcontracts; and

(C) The total increase or decrease in contract and subcontract incentives, fees, and profits computed in (f)(3)(iii) of this clause.

(4) For equitable adjustments for required changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, including target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, including target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation—

(A) For purposes of computing increased costs in the aggregate, the change in indirect rates multiplied by the applicable base for flexibly priced contracts and subcontracts; or

(B) For purposes of determining interest, the change in indirect costs multiplied by the applicable base for flexibly priced and fixed-price contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance. The total overpayments and underpayments shall be broken down by quarter, unless each of the quarterly amounts billed during the period of noncompliance were approximately equal.

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, includes the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect cost rates have been established).

(2) For noncompliances that involve estimating costs, compute the change in contract and subcontract price for flexibly priced and fixed-price contracts and subcontracts (the computation for the flexibly priced contracts is used in determining any necessary adjustments to fee and incentives), based on the difference between—

(i) The negotiated contract or subcontract price; and

(ii) What the negotiated price would have been had the Contractor used a compliant practice.

(3) For noncompliances that involve accumulating costs, compute the change in cost accumulations for flexibly priced and fixed-price contracts and subcontracts. The

computation for the fixed-price contracts is used only for purposes of determining interest on costs paid, based on the difference between—

(i) The costs that were accumulated under the noncompliant practice; and

(ii) The costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice).

(4) For purposes of determining increased costs in the aggregate for noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the amount in paragraph (i)(2)(i) exceeds the amount in paragraph (i)(2)(ii) of this clause, the difference is increased cost to the Government.

(ii) When the amount in paragraph (i)(2)(i) is less than the amount in paragraph (i)(2)(ii) of this clause, the difference is decreased cost to the Government.

(5) For purposes of determining increased costs in the aggregate for noncompliances that involve cost accumulation, determine the increased or decreased cost to the Government for flexibly priced contracts and subcontracts as follows:

(i) When the amount in paragraph (i)(3)(i) exceeds the amount in paragraph (i)(3)(ii) of this clause, the difference is increased cost to the Government.

(ii) When the amount in paragraph (i)(3)(i) is less than the amount in paragraph (i)(3)(ii) of this clause, the difference is decreased cost to the Government.

(6) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(7) For noncompliances that involve estimating costs, calculate the increased or decreased cost to the Government in the aggregate by adding—

(i) The increased or decreased cost to the Government for fixed-price contracts and subcontracts;

(ii) The total increase or decrease in contract and subcontracts incentives, fees, and profits computed in (i)(6) of this clause.

(8) For noncompliances that involve accumulating costs, calculate the increased or decreased cost to the Government in the aggregate by adding—

(i) The increased or decreased cost to the Government for flexibly priced contracts and subcontracts; and

(ii) The total increase or decrease in contract and subcontracts incentives, fees, and profits computed in paragraph (i)(6) of this clause.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent payment to the Contractor's affected CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact) until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4) or (a)(5) of the clauses at FAR 52.230–2 and 52.230–5; or with paragraph (a)(3) or (a)(4) of the clause at FAR 52.230–3; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230–2, FAR 52.230–3, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

8. Add section 52.230–7 to read as follows:

52.230–7 Proposal Disclosure—Cost Accounting Practice Changes.

As prescribed in 30.201–3(c), insert the following provision:

Proposal Disclosure—Cost Accounting Practice Changes (Date)

The offeror shall check ''yes'' below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

[ ] Yes
[ ] No

If the offeror checks ''Yes'' above, the offeror shall—

(1) Prepare the pricing proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

(End of provision)

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 389/P.L. 108–41

Automatic Defibrillation in Adam's Memory Act (July 1, 2003; 117 Stat. 839)

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San Gabriel River Watershed Study Act (July 1, 2003; 117 Stat. 840)

H.R. 788/P.L. 108–43

Glen Canyon National Recreation Area Boundary Revision Act (July 1, 2003; 117 Stat. 841)

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 2003

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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July 1	July 16	July 31	August 15	Sept 2	Sept 29
July 2	July 17	August 1	August 18	Sept 2	Sept 30
July 3	July 18	August 4	August 18	Sept 2	Oct 1
July 7	July 22	August 6	August 21	Sept 5	Oct 6
July 8	July 23	August 7	August 22	Sept 8	Oct 6
July 9	July 24	August 8	August 25	Sept 8	Oct 7
July 10	July 25	August 11	August 25	Sept 8	Oct 8
July 11	July 28	August 11	August 25	Sept 9	Oct 9
July 14	July 29	August 13	August 28	Sept 12	Oct 14
July 15	July 30	August 14	August 29	Sept 15	Oct 14
July 16	July 31	August 15	Sept 2	Sept 15	Oct 14
July 17	August 1	August 18	Sept 2	Sept 15	Oct 15
July 18	August 4	August 18	Sept 2	Sept 16	Oct 16
July 21	August 5	August 20	Sept 4	Sept 19	Oct 20
July 22	August 6	August 21	Sept 5	Sept 22	Oct 20
July 23	August 7	August 22	Sept 8	Sept 22	Oct 21
July 24	August 8	August 25	Sept 8	Sept 22	Oct 22
July 25	August 11	August 25	Sept 8	Sept 23	Oct 23
July 28	August 12	August 27	Sept 11	Sept 26	Oct 27
July 29	August 13	August 28	Sept 12	Sept 29	Oct 27
July 30	August 14	August 29	Sept 15	Sept 29	Oct 28
July 31	August 15	Sept 2	Sept 15	Sept 29	Oct 29