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Title 3—

The President

Proclamation 7690 of July 1, 2003

30th Anniversary of the All-Volunteer Force

By the President of the United States of America

A Proclamation

Throughout our history, members of the United States Armed Forces have inspired our citizens with their bravery, honor, and dedication. Our Nation continues to be grateful for the courageous men and women who have demonstrated extraordinary patriotism in choosing to help defend America and the cause of freedom.

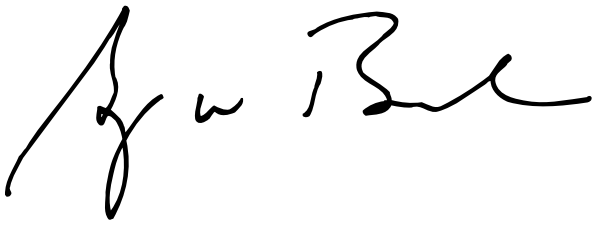
For the last 30 years, we have been fortunate to have a military composed entirely of volunteers. When our country's All-Volunteer Force was born on July 1, 1973, no comparable military in the world operated on a fully volunteer basis. Throughout most of the 20th century, the majority of our Armed Forces personnel were drafted, serving our Nation in both World Wars, the Korean conflict, and Vietnam. In the late 1960s, the American public's dissatisfaction with the draft prompted President Richard Nixon to establish The President's Commission on an All-Volunteer Armed Force. After studying whether to retain the draft or establish a volunteer military, the Commission concluded that a volunteer force would be economically viable and potentially more effective. After much debate, the Nixon Administration and the Congress allowed the authority for the draft to lapse, and the All-Volunteer Force was created.

Since that time, our volunteer Armed Forces personnel have upheld the finest traditions of our military and our country. Today, more than 1.4 million men and women choose to serve on active duty, along with nearly 880,000 members of the National Guard and Reserves. These volunteer soldiers helped to win the Cold War, turn back aggression during the Persian Gulf War, keep the peace in the former Yugoslavia, liberate oppressed people in Afghanistan and Iraq, and defend freedom around the world.

As we look toward the future of our country and our military, our Nation gives thanks for the prowess of our military, and we remain committed to providing our service men and women with the tools and training they need to continue to be the best in the world. On the celebration of the 30th anniversary of our All-Volunteer Force, I join Americans in thanking these brave men and women for choosing to serve in defense of the Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim July 1, 2003, as the 30th Anniversary of the All-Volunteer Force. I call upon all Americans to join me in recognizing this anniversary with heartfelt thanks and continued support for the men and women who defend our great Nation.

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



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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03–948–1 FR]

Irish Potatoes Grown in Colorado; Increase in Membership on the Area No. 2 Colorado Potato Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the number of members on the Area No. 2 Colorado Potato Administrative Committee (Committee) from 12 to 14. The Committee locally administers the marketing order regulating the handling of Irish potatoes grown in Colorado. Specifically, this rule increases from seven to nine the number of producers serving on the Committee by adding a second representative from the district comprised of Chaffee County and Saguache County, and by creating a position for a representative for certified seed potato producers from Area No. 2. This rule does not change the number of handler representatives on the Committee, which remains at five. The addition of two new producer members provides the Committee with greater industry representation and therefore increased effectiveness.

EFFECTIVE DATE: This final rule becomes effective July 8, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA 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 law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases from 12 to 14 the number of members on the Committee by adding a second producer representative for Chaffee County and Saguache County, and by creating a position for a producer representative for certified seed potato producers from Area No. 2. Consistent with § 948.52, each new member position has an alternate with the same qualifications as the member. This rule does not change the number of handler representatives on the Committee, which remains at five. This action was unanimously recommended by the Committee at a meeting on March 20, 2003.

Section 948.4 of the order establishes three subdivisions, or areas, within the State of Colorado, and § 948.50 provides authority for the establishment of a committee as an administrative agency for each area. Section 948.53 provides authority for the reestablishment of these areas or subdivisions of these areas, as well as the redistribution of representation within area subdivisions or among marketing organizations within the respective areas. Finally, § 948.6 provides a definition for seed potatoes.

Section 948.150 of the order's administrative rules and regulations prescribes the current membership on each area committee as reestablished pursuant to § 948.53. For Area No. 2, the Committee consists of seven producer members and five handler members with two producers from Rio Grande County, one producer from Chaffee County or Saguache County, one producer from Conejos County, two producers from Alamosa County, and one producer from all remaining counties in Area No. 2. In addition, two handlers represent bulk handlers and three handlers represent handlers other than bulk handlers.

As indicated above, the order provides that one producer member on the Committee represents producers in both Chaffee County and Saguache County. Based on a Committee recommendation, on March 31, 1995 (62 FR 16565), the USDA reestablished Area No. 2 to include Chaffee County, which previously had been part of the Area No. 3 production area. This reestablishment was initiated largely due to Chaffee County's proximity to Area No. 2 and a request from a Chaffee County producer/handler. That action also reestablished Committee membership by combining Chaffee County and Saguache County as one district for the purpose of nominating a producer member to the Committee.

Although Chaffee County potato production has remained relatively static, potato production in Saguache County has in recent years increased significantly due to an increase in potato acreage. According to Committee records, Saguache County farmers harvested about 5,310,000 hundredweight of potatoes from nearly 17,000 acres during the 2001–2002 season. This is nearly double the 1985–1986 production of the 2,930,000 hundredweight of potatoes that were harvested from 8,900 acres in Saguache County. It is also noteworthy that Saguache County had about 16 percent of the total production in Area No. 2 during the 1985–1986 season compared to about 25 percent of the total during the 2001–2002 season. With two seats on the Committee, producers from Chaffee and Saguache Counties comprise about 22 percent of the producer members on the Committee.

Arable land in Chaffee County is generally limited to a relatively small production area around the city of Salida, and the Committee continues to believe that Chaffee and Saguache Counties should remain combined as a subdivision, or nominating district, in Area No. 2. The two members from this district, as well as their respective alternates, will be nominated for membership on the Committee from all eligible producers from either or both of these two counties.

According to the Committee, there are currently 38 producers with certified seed potato production on 14,760 Area No. 2 acres. Of the 6,273,000 hundredweight of certified seed potatoes harvested in 2001–2002, Committee records indicate that 977,866 hundredweight were marketed out-of-area, and 343,223 hundredweight were planted in the San Luis Valley. Most of the balance of the total seed production was replanted into the certified seed program for multigenerational seed development. Certified seed potato shipments are currently exempt from the grade, size, maturity, and inspection requirements of § 948.386, but are subject to the order's assessment rate as established under § 948.216.

The Committee, in conjunction with the Colorado Area No. 2 potato industry, recently held a strategic planning session and identified several key issues. One of the important issues looked at by the Committee was its membership as it relates to Area No. 2 potato industry representation. Consensus among participants indicated that there would be a mutual benefit to the Committee and the industry with certified potato seed representation on the Committee. Seed potatoes are typically produced in areas separate from the major commercial fresh and processed potato production areas. This isolation is necessary to maintain the strict State of Colorado certified seed tolerances established for plant diseases. The Committee believes that the infusion of fresh ideas from this facet of the industry will provide for a new perspective on the Committee, as well as providing better service to the entire Colorado Area No. 2 potato industry.

In addition, based in part on the increase in production in Saguache County and on the significance of certified seed potato production in Area No. 2, the Committee received requests from the industry that producer representation on the Committee be increased. Finally, the Committee has recently formed several subcommittees for the purpose of providing better service to the Area No. 2 potato industry. Due to an inadequate candidate pool, the Committee has experienced problems in identifying enough committee members willing and able to serve on these subcommittees. Taking all of this into consideration, the Committee determined that the addition of two producer members and their respective alternates will not only provide better representation for Area No. 2 producers, but will also provide an increased pool of expertise on the Committee and its subcommittees.

Thus, the reestablished Committee consists of nine producer members and five handler members with two producers from Rio Grande County, two producers from Chaffee County or Saguache County, one producer from Conejos County, two producers from Alamosa County, one producer from all remaining counties in Area No. 2, and one producer representing certified seed producers in Area No. 2. In addition, two handlers represent bulk handlers and three handlers represent handlers other than bulk handlers.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Area No. 2 is also referred to as the San Luis Valley area by the industry.

During the 2001–2002 marketing year, 14,805,719 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold in the fresh market. Based on an estimated average f.o.b. price of $11.75 per hundredweight, the Committee estimates that 79, or about 88 percent of the Area No. 2 handlers, had annual receipts of less than $5,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for the 2001–2002 marketing year was $9.65 per hundredweight. The average annual producer revenue for the 230 Colorado Area No. 2 potato producers is therefore calculated to be approximately $621,196. In view of the foregoing, the majority of the Colorado Area No. 2 potato producers and handlers may be classified as small entities.

This rule increases the number of members on the Committee from 12 members to 14 members. Specifically, this rule increases from seven to nine the number of producers on the Committee by adding a second producer representative from Chaffee County and Saguache County, and by creating a position for a representative for certified seed potato producers from all the counties in Area No. 2. This rule does not change the number of handler representatives on the Committee, which remains at five. Each position on the Committee continues to have an alternate with the same qualifications as the member.

Potato production in Saguache County has increased significantly in recent years. Increased potato acreage has been the primary reason for the production increase. Colorado's Saguache County and Chaffee County comprise a nominating district within Area No. 2 and have one member and alternate member serving on the Committee. The Committee believes that an additional member from this area will benefit both the Committee and the industry. With certified potato seed

production representing a significantly important segment of the Area No. 2 potato crop, the Committee also believes that the addition of a certified seed producer position will add a fresh perspective to its membership and will provide better representation for the San Luis Valley potato industry. Authority for this action is provided in § 948.53 of the order.

This rule will cause a small increase in the Committee's cost of administering the order. For example, overall costs associated with Committee members' travel to attend meetings will increase due to the additional members requiring compensation. The increased cost, however, should be offset by the non-economic benefits derived by providing a greater number of producers the chance to participate as members of the Committee, as well as the service the increased Committee expertise and diversity will provide to the San Luis Valley potato industry. Regardless, the costs associated with this rule are not expected to be disproportionately greater or less for small producers and handlers than for larger entities.

The Committee discussed alternatives to this change. In considering its goals of providing additional representation in response to the greater production in Saguache County and the significant certified seed potato production throughout the San Luis Valley, the Committee looked at various alternatives to the current method of representation. For example, the Committee considered combining the counties in Area No. 2 into fewer subdivisions, or districts, in order to keep the Committee the same size while providing for greater representation to certain districts. After considerable discussion, however, the Committee determined that the only equitable method of handling the representation problem was to add additional members and leave the current subdivisions unchanged.

This final rule increases the number of member and alternate member positions on the Committee. Since the two-year Committee terms are arranged so that approximately one-half terminate each year, this action will increase by four the number of background statements requiring completion in a two-year period. It is estimated that the time needed to complete the forms by producers who are nominated to serve in the two additional member and two additional alternate member positions will be less than two minutes per response, or a total of 8 minutes, which will not substantially impact the total burden hours. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), these additional information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

The Committee's meeting was widely publicized throughout the San Luis Valley and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 20, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 30, 2003 (68 FR 32432). Copies of the rule were mailed or sent via facsimile to all Committee members. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending June 16, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be in place promptly so that the Committee can nominate members and alternate members for the two new producer positions as soon as possible. Further, handlers and producers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 948.150, paragraph (a) is revised to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(a) Area No. 2 (San Luis Valley): Nine producers and five handlers selected as follows:

(1) Two (2) producers from Rio Grande County;
(2) Two (2) producers from either Saguache County or Chaffee County;
(3) One (1) producer from Conejos County;
(4) Two (2) producers from Alamosa County;
(5) One (1) producer from all other counties in Area No. 2;
(6) One (1) producer representing certified seed producers in Area No. 2;
(7) Two (2) handlers representing bulk handlers in Area No. 2;
(8) Three (3) handlers representing handlers in Area No. 2 other than bulk handlers.

* * * * *

Dated: June 30, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–17040 Filed 7–3–03; 8:45 am]

BILLING CODE 3410–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF81

Elimination of Sanctions for Refusal of Vocational Rehabilitation Services Without Good Cause

AGENCY: Social Security Administration (SSA).

ACTION: Final rule.

SUMMARY: We are amending our regulations to remove provisions

relating to the imposition of benefit sanctions on account of a beneficiary's refusal of rehabilitation services. We are making these changes to reflect the repeal of sections 222(b) and 1615(c) of the Social Security Act (the Act). Prior to their repeal, these sections of the Act authorized the Commissioner of Social Security to impose sanctions against the benefits of a disabled or blind beneficiary who refused, without good cause, to accept rehabilitation services made available by a State vocational rehabilitation (VR) agency. The Ticket to Work and Work Incentives Improvement Act of 1999 repealed these sections of the Act, effective January 1, 2001. We are amending our regulations by removing rules and related provisions that are obsolete as a result of the repeal of these sections of the Act to conform our regulations to the changes in the statute.

EFFECTIVE DATE: These rules are effective July 7, 2003.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online): at *ssa.gov.*

FOR FURTHER INFORMATION CONTACT: Melvin Winer, Social Insurance Specialist, Office of Employment Support Programs, 107 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, e-mail to *regulations@ssa.gov,* or telephone (410) 965–9175 or TTY (410) 966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *ssa.gov.*

SUPPLEMENTARY INFORMATION: These regulations reflect amendments to the Act which affect the payment of Social Security benefits under title II of the Act and Supplemental Security Income (SSI) benefits based on disability or blindness under title XVI of the Act, as well as payments to State VR agencies and alternate participants under the VR reimbursement programs under titles II and XVI of the Act.

Background

Sections 222 and 1615 of the Social Security Act

In general, sections 222(a) and 1615(a) of the Act require us to refer Social Security disability beneficiaries, as well as disabled or blind SSI beneficiaries ages 16–64, to the State VR agency (*i.e.*, a State agency operating under a State plan for VR services approved under title I of the Rehabilitation Act of 1973, as amended) for necessary VR services. Sections 222(d) and 1615(d) and (e) of the Act authorize us to reimburse a State VR agency for the reasonable and necessary costs of VR services furnished beneficiaries in certain categories of cases. Based on authority provided under sections 222(d)(2), 1615 and 1633 of the Act, our regulations on the VR reimbursement programs provide that if a State VR agency is unwilling to participate with respect to a beneficiary whom we referred to that agency (or if the State does not have an approved State plan for VR services), we may refer the beneficiary to an alternate participant for appropriate VR services, and may pay the alternate participant for the costs of services under the same conditions that would apply to a State VR agency.

Prior to January 1, 2001, sections 222(b) and 1615(c) of the Act required that certain sanctions be imposed against benefits (*i.e.*, deductions against Social Security benefits or a suspension of SSI benefits) if a beneficiary refused VR services without good cause. Section 222(b) of the Act required us to make deductions from the Social Security benefits of a disability beneficiary (as well as deductions from the benefits of family members in certain circumstances) for any month in which such beneficiary refuses without good cause to accept rehabilitation services available to him or her from a State VR agency. In general, section 1615(c) of the Act provided that an individual shall not be eligible for SSI benefits if the individual refuses without good cause to accept VR services for which he or she is referred under section 1615(a) of the Act. Sections 222(b) and 1615(c) of the Act were repealed, effective January 1, 2001, by amendments to the Act made by the Ticket to Work and Work Incentives Improvement Act of 1999.

The Ticket To Work and Work Incentives Improvement Act of 1999 (Public Law 106–170)

On December 17, 1999, Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, became law. Section 101(a) of Public Law 106–170 added section 1148 of the Act to establish the Ticket to Work and Self-Sufficiency Program (Ticket to Work program). The purpose of the Ticket to Work program is to expand the universe of service providers available to beneficiaries with disabilities who are seeking employment services, VR services, and other support services to assist them in obtaining, regaining, and maintaining self-supporting employment.

Under the Ticket to Work program, the Commissioner of Social Security may issue a ticket to Social Security disability beneficiaries and disabled or blind SSI beneficiaries for participation in the program. A beneficiary's participation in the program is voluntary. Each beneficiary has the option of using his or her ticket to obtain services from a provider known as an employment network or from a State VR agency. The beneficiary will choose the employment network or State VR agency, and the employment network or State VR agency will provide services. Employment networks will also be able to choose whom they serve. Our regulations implementing the Ticket to Work program are contained in 20 CFR part 411.

Section 101(b) of Public Law 106–170 made certain conforming amendments to the provisions of sections 222 and 1615 of the Act. Sections 101(b)(1)(C) and (b)(2)(B) of this law eliminated the sanctions for refusal of VR services by repealing sections 222(b) and 1615(c) of the Act, respectively. The repeal of these sections of the Act was effective January 1, 2001.

Section 101(b)(1)(B) of Public Law 106–170 eliminated the requirement for referral of Social Security disability beneficiaries to State VR agencies by repealing section 222(a) of the Act. Section 101(b)(2)(A) of this law amended section 1615(a) of the Act to eliminate the similar requirement that disabled or blind SSI beneficiaries ages 16–64 be referred to State VR agencies. These amendments to the Act take effect in a State when the Ticket to Work program is implemented in that State.

We will publish at a later date in the **Federal Register** rules to reflect the amendments eliminating the requirements for the referral of beneficiaries to State VR agencies in those States in which the Ticket to Work program is implemented, as provided in sections 101(b), (c) and (d) of Public Law 106–170. Additionally, the use of alternate participants under the title II and title XVI VR reimbursement programs will be phased out in the States as the Ticket to Work program is implemented, as authorized under section 101(d)(5) of Public Law 106–170. Under section 1148(d)(4)(B) of the Act and our regulations at 20 CFR part 411, subpart J, alternate participants in the VR reimbursement programs may qualify to serve as employment networks under the Ticket to Work program when that program is implemented in their State.

Purpose and Scope of Changes to the Regulations

In these final rules, we are amending our regulations to remove those rules and related provisions which are obsolete as a result of the repeal of sections 222(b) and 1615(c) of the Act. We are removing the provisions of our regulations which provide for the imposition of benefit sanctions for a beneficiary's refusal of VR services without good cause.

In addition, we are amending our regulations on the VR reimbursement programs to remove the provisions which provide for payment to a State VR agency or alternate participant for services provided a beneficiary in a case where benefit sanctions are imposed because the beneficiary, without good cause, refused to continue to accept VR services or failed to cooperate in such a manner as to preclude his or her successful rehabilitation. As a result of the repeal of sections 222(b) and 1615(c) of the Act, the benefit sanctions no longer apply, and we have ceased making determinations as to whether a beneficiary had good cause for refusing to continue or cooperate in a VR program, effective January 1, 2001. Consequently, we are removing the rules providing for payments to State VR agencies or alternate participants under the VR reimbursement programs in cases where a beneficiary refuses to continue or cooperate in a VR program without good cause and benefit sanctions are imposed, since such cases can no longer occur after December 2000.

These final rules only remove those provisions of our regulations which are obsolete as a result of the repeal of sections 222(b) and 1615(c) of the Act. Some of the sections of our regulations affected by these final rules contain other provisions which require revision because of other amendments to the Act. For example, §§ 404.402(a), 416.1701 and 416.2040(b) contain provisions relating to benefit sanctions for refusal of VR services as well as provisions relating to the suspension of benefit payments for noncompliance with treatment for drug addiction or alcoholism. These latter provisions no longer apply as a result of amendments to the Act made by section 105 of Public Law 104–121, the Contract with America Advancement Act of 1996. While we are removing provisions relating to benefit sanctions for refusal of VR services, we are not, at this time, making other changes to conform our regulations to other amendments to the Act. We plan to publish in the **Federal Register** at a later date proposed rules to take account of the amendments to the Act made by section 105 of Public Law 104–121, relating to drug addiction and alcoholism, and will address the need for changes to §§ 404.402(a), 416.1701 and 416.2040(b) resulting from those amendments as a part of that regulatory initiative.

Several provisions of the regulations which we are revising in order to remove references to a deduction from Social Security benefits on account of a beneficiary's refusal of VR services, also contain certain outdated, gender-specific references to a woman's failure to have a child in her care as another event causing a deduction to be made from Social Security benefits. In these final rules, we are making changes to update the latter provisions to eliminate the gender-specific wording that refers only to a beneficiary who is a woman. We are making these changes to conform to § 404.421 of our regulations which explains the conditions under which a deduction will be made from a person's wife's, husband's, mother's or father's benefits because he or she does not have a child in his or her care.

Changes to the Regulations

In 20 CFR part 404, subpart E, we are removing § 404.422, which contained the basic rules for making deductions from Social Security benefits because of a disability beneficiary's refusal to accept VR services without good cause. In addition, we are amending other sections of our regulations in 20 CFR part 404, subpart E, to remove references to section 222(b) of the Act or § 404.422, or to remove language or paragraphs relating to deductions from Social Security benefits on account of a beneficiary's refusal of VR services without good cause. We are making these changes to §§ 404.401(b), 404.402(a), (b)(2) and (d)(4), 404.412(a)(1), 404.421(d), 404.423, 404.425, 404.435(a)(2), 404.436, 404.437(a), and 404.458. In §§ 404.402(a), 404.436(b) and 404.437(a), we also are making changes to certain provisions to remove outdated, gender-specific references to a woman's failure to have care of a child as a cause for a deduction from benefits, to update and make these provisions consistent with § 404.421.

In § 404.902, we are removing and reserving paragraph (g), relating to determinations about a deduction from Social Security benefits because of a beneficiary's refusal to accept rehabilitation services. In addition, we are amending § 404.1596(b)(2) to remove the provision providing for a suspension of Social Security benefits if a beneficiary refuses to accept VR services without a good reason.

Sections 416.213, 416.1328, and 416.1715 set out the basic rules on ineligibility for, or the suspension of, SSI benefits because of a disabled or blind SSI beneficiary's refusal to accept VR services without good cause. We are removing these sections from our regulations.

In § 416.708, we are removing and reserving paragraph (i), relating to an SSI beneficiary's responsibility to report to us his or her refusal to accept VR services. We also are amending § 416.1701 to remove the references to a refusal of VR services. In addition, we are amending § 416.2040(b) to remove the language discussing a refusal of VR services under section 1615 of the Act.

In 20 CFR part 404, subpart V, and part 416, subpart V, we are removing §§ 404.2113 and 416.2213, respectively, relating to payment for VR services provided a beneficiary in a case where benefit sanctions are imposed because the beneficiary, without good cause, refused to continue or cooperate in a VR program. We also are making conforming changes to §§ 404.2101, 404.2102, 404.2103, 404.2109, 404.2116 and 404.2117 to reflect the removal of § 404.2113, and to §§ 416.2201, 416.2202, 416.2203, 416.2209, 416.2216 and 416.2217 to reflect the removal of § 416.2213.

Regulatory Procedures

Proceeding Directly to Final Rules

Under section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are ''impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B).

We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures for the changes to the regulations described above. The changes merely conform our regulations to current law by removing rules and related provisions which are obsolete as a result of the repeal of sections 222(b) and 1615(c) of the Act concerning sanctions for refusing rehabilitation services without good cause. These sections of the Act were repealed by sections 101(b)(1)(C) and (b)(2)(B) of Public Law 106–170, effective January 1, 2001. Because the removal of obsolete

provisions from our regulations to reflect the repeal of these sections of the Act does not involve the exercise of discretionary rulemaking authority, we find that it is unnecessary to publish proposed rules and offer the public the opportunity to comment before we publish final rules. Moreover, because our existing regulations are inconsistent with current law and could mislead the public, we also find that further delay in amending these regulations, to allow for public comment, would be contrary to the public interest.

Making the Final Rules Effective Upon Publication

Section 553(d) of 5 U.S.C. provides that, with certain exceptions, the effective date of a ''substantive rule'' shall not be less than 30 days after its publication. We find that good cause exists for an exception for these final rules. As noted above, these final rules merely reflect the statutory changes made by sections 101(b)(1)(C) and (b)(2)(B) of Public Law 106–170. For the reasons discussed in the section above entitled ''Proceeding Directly to Final Rules,'' we find that delaying the effective date for 30 days after publication would also be unnecessary and contrary to the public interest. *See* 5 U.S.C. 553(d).

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these final rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they primarily affect only individuals, and those entities that voluntarily entered into a contractual agreement with us. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations impose no reporting or recordkeeping requirements that require OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security, Vocational rehabilitation.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Vocational rehabilitation.

Dated: April 9, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts E, J, P, and V of part 404 and subparts B, G, M, Q, T, and V of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart E—[Amended]

■ 1. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 216(l), 223(e), 224, 225, 702(a)(5), 1129A and 1147 of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 416(l), 423(e), 424a, 425, 902(a)(5), 1320a-8a and 1320b-17).

■ 2. Amend § 404.401 by revising paragraph (b)(5), removing paragraph (b)(6), and redesignating paragraph (b)(7) as paragraph (b)(6) to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

* * * * *

(b) * * *

(5) Failure to report within the prescribed period earnings from work in employment or self-employment (*see* § 404.453); or

* * * * *

■ 3. Amend § 404.402 by revising paragraph (a) introductory text, and paragraphs (b)(2) and (d)(4) to read as follows:

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

(a) *Deductions, reductions, adjustment.* Deductions because of earnings or work (*see* §§ 404.415 and 404.417); failure to have a child ''in his or her care'' (*see* § 404.421); as a penalty for failure to timely report noncovered work outside the United States, failure to report that he or she no longer has a child ''in his or her care,'' or failure to timely report earnings (*see* §§ 404.451 and 404.453); because of unpaid maritime taxes (*see* § 404.457); or nonpayments because of drug addiction and alcoholism to individuals other than an insured individual who are entitled to benefits on the insured individual's earnings record are made:

* * * * *

(b) * * *

(2) Reduction of benefits because of entitlement to certain public disability benefits (*see* § 404.408) is made before deduction under section 203 of the Act relating to work (*see* §§ 404.415, 404.417, 404.451, and 404.453) and failure to have care of a child (*see* §§ 404.421 and 404.451).

* * * * *

(d) * * *

(4) Current deductions under §§ 404.417 and 404.421;

* * * * *

■ 4. Amend § 404.412 by revising the title of the section and paragraph (a)(1) to read as follows:

§ 404.412 After my benefits are reduced for age when and how will adjustments to that reduction be made?

(a) * * *

(1) Months subject to deduction under § 404.415 or § 404.417;

* * * * *

■ 5. Amend § 404.421 by revising the title of the section and paragraph (d) to read as follows:

§ 404.421 How are deductions made when a beneficiary fails to have a child in his or her care?

* * * * *

(d) *When a child is considered not entitled to benefits.* For purposes of paragraphs (a) and (b) of this section, a person is considered not entitled to child's benefits for any month in which she or he is age 18 or over and is entitled to child's benefits because she or he is a full-time student at an educational institution. This paragraph applies to benefits for months after December 1964.

§ 404.222 [Removed]

■ 6. Remove § 404.422.

■ 7. Amend § 404.423 by revising the first sentence to read as follows:

§ 404.423 Manner of making deductions.

Deductions provided for in §§ 404.415, 404.417, and 404.421 (as modified in § 404.458) are made by withholding benefits (in whole or in part, depending upon the amount to be withheld) for each month in which an event causing a deduction occurred.

* * *

■ 8. Revise § 404.425 to read as follows:

§ 404.425 Total amount of deductions where deduction events occur in more than 1 month.

If a deduction event described in §§ 404.415, 404.417, and 404.421 occurs in more than 1 month, the total amount deducted from an individual's benefits is equal to the sum of the deductions for all months in which any such event occurred.

■ 9. Amend § 404.435 by revising paragraph (a)(2) to read as follows:

§ 404.435 Excess earnings; months to which excess earnings cannot be charged.

(a) * * *

(2) In which he or she was considered not entitled to benefits (due to noncovered work outside the United States or no child in care as described in § 404.436);

* * * * *

■ 10. In § 404.436, revise paragraph (b) and remove paragraphs (c), (d) and (e) to read as follows:

§ 404.436 Excess earnings; months to which excess earnings cannot be charged because individual is deemed not entitled to benefits.

* * * * *

(b) Failure to have a child in his or her care (as described in § 404.421).

■ 11. Amend § 404.437 by revising paragraph (a) to read as follows:

§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.

* * * * *

(a) After reduction for the *maximum* (*see* §§ 404.403 and 404.404). The rate as reduced for the maximum as referred to in this paragraph is the one applicable to remaining entitled beneficiaries after exclusion of beneficiaries deemed not entitled under § 404.436 (due to a deduction for engaging in noncovered remunerative activity outside the United States or failure to have a child in his or her care);

* * * * *

■ 12. Amend § 404.458 by revising the first sentence to read as follows:

§ 404.458 Limiting deductions where total family benefits payable would not be affected or would be only partly affected.

Notwithstanding the provisions described in §§ 404.415, 404.417, 404.421, 404.451, and 404.453 about the amount of the deduction to be imposed for a month, no such deduction is imposed for a month when the benefits payable for that month to all persons entitled to benefits on the same earnings record and living in the same household remain equal to the maximum benefits payable to them on that earnings record.

* * *

Subpart J—[Amended]

■ 13. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)-(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)-(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 *note*); secs. 5, 6(c)-(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 *note*).

§ 404.902 [Amended]

■ 14. In § 404.902, remove and reserve paragraph (g).

Subpart P—[Amended]

■ 15. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)-(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)-(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 16. Amend § 404.1596 by revising paragraphs (b)(2)(i) and (b)(2)(ii) and removing paragraph (b)(2)(iii) to read as follows:

§ 404.1596 Circumstances under which we may suspend your benefits before we make a determination.

* * * * *

(b) * * *

(2) * * *

(i) You have failed to respond to our request for additional medical or other evidence and we are satisfied that you received our request and our records show that you should be able to respond; or

(ii) We are unable to locate you and your checks have been returned by the Post Office as undeliverable.

* * * * *

Subpart V—[Amended]

■ 17. The authority citation for subpart V of part 404 continues to read as follows:

Authority: Secs. 205(a), 222, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 422, and 902(a)(5)).

■ 18. Revise § 404.2101 to read as follows:

§ 404.2101 General.

Section 222(d) of the Social Security Act authorizes the transfer from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund of such sums as may be necessary to pay for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled individuals entitled under section 223, 225(b), 202(d), 202(e) or 202(f) of the Social Security Act. The purpose of this provision is to make VR services more readily available to disabled individuals and ensure that savings accrue to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund. Payment will be made for VR services provided on behalf of such an individual in cases where—

(a) The furnishing of the VR services results in the individual's completion of a continuous 9-month period of substantial gainful activity (SGA) as specified in §§ 404.2110 through 404.2111; or

(b) The individual continues to receive disability payments from us, even though his or her disability has ceased, because of his or her continued participation in an approved VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls (*see* § 404.2112).

■ 19. Amend § 404.2102 by revising the second sentence of the introductory text and paragraph (f) to read as follows:

§ 404.2102 Purpose and scope.

* * * Payment will be provided for VR services provided on behalf of disabled individuals under one or more of the provisions discussed in § 404.2101.

* * * * *

(f) Section 404.2112 describes when payment will be made to a VR agency or alternate participant because an individual's disability benefits are continued based on his or her participation in a VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls.

* * * * *

§ 404.2103 [Amended]

■ 20. Amend § 404.2103 by removing the definition of *Good cause for VR refusal.*

§ 404.2109 [Amended]

■ 21. Amend § 404.2109 by removing paragraph (c) and redesignating paragraphs (d) through (h) as paragraphs (c) through (g).

§ 404.2113 [Removed]

■ 22. Remove § 404.2113.

§ 404.2116 [Amended]

■ 23. In § 404.2116, remove paragraph (c).

■ 24. Amend § 404.2117 by revising the introductory text and paragraph (f) to read as follows:

§ 404.2117 What costs will be paid.

In accordance with section 222(d) of the Social Security Act, the Commissioner will pay the State VR agency or alternate participant for the VR services described in § 404.2114 which were provided during the period described in § 404.2115 and which meet the criteria in § 404.2111 or § 404.2112, but subject to the following limitations:

* * * * *

(f) Payment for VR services or costs may be made under more than one of the VR payment provisions described in §§ 404.2111 and 404.2112 of this subpart and similar provisions in §§ 416.2211 and 416.2212 of subpart V of part 416. However, payment will not be made more than once for the same VR service or cost; and

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—[AMENDED]

■ 25. The authority citation for subpart B of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h *note*).

§ 416.213 [Removed]

■ 26. Remove § 416.213.

Subpart G—[Amended]

■ 27. The authority citation for subpart G of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 *note*).

§ 416.1328 [Amended]

■ 28. In § 416.708, remove and reserve paragraph (i).

Subpart M—[Amended]

■ 29. The authority citation for subpart M of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1614, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382c, 1382h, and 1383).

§ 416.1328 [Removed]

■ 30. Remove § 416.1328.

Subpart Q—[Amended]

■ 31. The authority citation for subpart Q of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611(e)(3), 1615, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(e)(3), 1382d, and 1383).

■ 32. In § 416.1701, revise the third and fourth sentences to read as follows:

§ 416.1701 Scope of subpart.

* * * This subpart also describes the conditions under which you can refuse treatment after we have referred you. If these conditions are not met, this subpart describes how your benefits are affected when you refuse treatment.

§ 416.1715 [Removed]

■ 33. Remove § 416.1715.

Subpart T—[Amended]

■ 34. The authority citation for subpart T of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1616, 1618, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382e, 1382g, and 1383); sec. 212, Pub. L. 93–66, 87 Stat. 155 (42 U.S.C. 1382 *note*); sec. 8(a), (b)(1)–(b)(3), Pub. L. 93–233, 87 Stat. 956 (7 U.S.C. 612c *note*, 1431 *note* and 42 U.S.C. 1382e *note*); secs. 1(a)–(c) and 2(a), 2(b)(1), 2(b)(2), Pub. L. 93–335, 88 Stat. 291 (42 U.S.C. 1382 *note*, 1382e *note*).

■ 35. Amend § 416.2040 by revising paragraph (b) to read as follows:

§ 416.2040 Limitations on eligibility.

* * * * *

(b) *Ineligible persons.* No person who is ineligible for a Federal benefit for any month under sections 1611(e)(1)(A), (2), (3), or (f) of the Act (failure to file; refuses treatment for drug addiction or alcoholism; outside the United States) or other reasons (other than the amount of income) shall be eligible for such State supplementation for such month.

* * * * *

Subpart V—[Amended]

■ 36. The authority citation for subpart V of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1615, 1631(d)(1) and (e), and 1633(a) of the Social Security Act (42 U.S.C. 902(a)(5), 1382d, 1383(d)(1) and (e), and 1383b(a)).

■ 37. Revise § 416.2201 to read as follows:

§ 416.2201 General.

In general, sections 1615(d) and (e) of the Social Security Act (the Act) authorize payment from the general fund for the reasonable and necessary costs of vocational rehabilitation (VR) services provided certain disabled or blind individuals who are eligible for supplemental security income (SSI) benefits, special SSI eligibility status, or federally administered State supplementary payments. In this subpart, such benefits, status, or payments are referred to as disability or blindness benefits (*see* § 416.2203). Subject to the provisions of this subpart, payment may be made for VR services provided an individual during a month(s) for which the individual is eligible for disability or blindness benefits, including the continuation of such benefits under section 1631(a)(6) of the Act, or for which the individual's disability or blindness benefits are suspended (*see* § 416.2215). Paragraphs (a) and (b) of this section describe the cases in which the State VR agencies and alternate participants can be paid for the VR services provided such an individual under this subpart. The purpose of sections 1615(d) and (e) of the Act is to make VR services more readily available to disabled or blind individuals and ensure that savings accrue to the general fund. Payment will be made for VR services provided on behalf of such an individual in cases where—

(a) The furnishing of the VR services results in the individual's completion of a continuous 9-month period of substantial gainful activity (SGA) as specified in §§ 416.2210 through 416.2211; or

(b) The individual continues to receive disability or blindness benefits, even though his or her disability or blindness has ceased, under section 1631(a)(6) of the Act because of his or her continued participation in an approved VR program which we have determined will increase the likelihood that he or she will not return to the disability or blindness rolls (*see* § 416.2212).

■ 38. Amend § 416.2202 by revising the second sentence of the introductory text and paragraph (f) to read as follows:

§ 416.2202 Purpose and scope.

* * * Payment will be provided for VR services provided on behalf of disabled or blind individuals under one or more of the provisions discussed in § 416.2201.

* * * * *

(f) Section 416.2212 describes when payment will be made to a VR agency

or alternate participant because an individual's disability or blindness benefits are continued based on his or her participation in a VR program which we have determined will increase the likelihood that he or she will not return to the disability rolls.

* * * * *

§ 416.2203 [Amended]

■ 39. Amend § 416.2203 by removing the definition of *Good cause for VR refusal.*

§ 416.2209 [Amended]

■ 40. Amend § 416.2209 by removing paragraph (c) and redesignating paragraphs (d) through (h) as paragraphs (c) through (g).

§ 416.2213 [Removed]

■ 41. Remove § 416.2213.

§ 416.2216 [Amended]

■ 42. In § 416.2216, remove paragraph (c).

■ 43. Amend § 416.2217 by revising the introductory text and paragraph (f) to read as follows:

§ 416.2217 What costs will be paid.

In accordance with section 1615(d) and (e) of the Social Security Act, the Commissioner will pay the State VR agency or alternate participant for the VR services described in § 416.2214 which were provided during the period described in § 416.2215 and which meet the criteria in § 416.2211 or § 416.2212, but subject to the following limitations:

* * * * *

(f) Payment for VR services or costs may be made under more than one of the VR payment provisions described in §§ 416.2211 and 416.2212 of this subpart and similar provisions in §§ 404.2111 and 404.2112 of subpart V of part 404. However, payment will not be made more than once for the same VR service or cost; and

* * * * *

[FR Doc. 03–16858 Filed 7–3–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 2003D–0209]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Breath Nitric Oxide Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the breath nitric oxide test system into class II (special controls). The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for the device.

DATES: This rule is effective August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Jean Cooper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after issuing an order classifying the device, FDA must publish a notice in the **Federal Register** announcing the classification.

On March 17, 2003, FDA received a petition submitted under section 513(f)(2) of the act by Aerocrine AB, through Certified Software Solutions, Inc., seeking an evaluation of the automatic class III designation of its NIOX BREATH NITRIC OXIDE TEST SYSTEM. In accordance with section 513(f)(1) of the act, FDA issued an order automatically classifying the NIOX BREATH NITRIC OXIDE TEST SYSTEM in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the NIOX BREATH NITRIC OXIDE TEST SYSTEM can be classified in class II with the establishment of special controls. This device is intended to aid in evaluating an asthma patient's response to anti-inflammatory therapy by measuring changes in fractional exhaled nitric oxide concentration in asthma patients, as an adjunct to established clinical and laboratory assessments of asthma. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the risk to health associated specifically with this type of device as improper patient management. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled ''Class II Special Controls Guidance Document: Breath Nitric Oxide Test System.''

The class II special controls guidance provides information on how to meet

premarket (510(k)) submission requirements for the device, including recommendations for labeling and performance studies. FDA believes that adherence to the class II special controls addresses the potential risk to health identified in the previous paragraph and provides a reasonable assurance of the safety and effectiveness of the device.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a breath nitric oxide test system will need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. The device is used as an aid in evaluating an asthma patient's response to anti-inflammatory therapy by measuring changes in fractional exhaled nitric oxide concentration in asthma patients, as an adjunct to established clinical and laboratory assessments of asthma. FDA review of performance characteristics and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the breath nitric oxide test system before marketing the device.

On April 30, 2003, FDA issued an order classifying the NIOX BREATH NITRIC OXIDE TEST SYSTEM and substantially equivalent devices of this generic type into class II under the generic name, breath nitric oxide test system. FDA identifies this generic type of device as a breath nitric oxide test system, which is intended to aid in evaluating an asthma patient's response to anti-inflammatory therapy by measuring changes in fractional exhaled nitric oxide concentration in asthma patients, as an adjunct to established clinical and laboratory assessments of asthma.

FDA is codifying this device by adding § 862.3080. The order also identifies a special control applicable to this device, a guidance document entitled ''Class II Special Controls Guidance Document: Breath Nitric Oxide Test System.''

II. Electronic Access

In order to receive the guidance entitled ''Class II Special Controls Guidance Document: Breath Nitric Oxide Test System'' via your fax machine, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt, press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1211) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh.*

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) 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

FDA has examined the impacts of the final rule under Executive Order 12866 and 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). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA knows of only one manufacturer of this type of device. Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

V. Federalism

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

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 862

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 862.3080 is added to subpart D to read as follows:

§ 862.3080 Breath nitric oxide test system.

(a) *Identification.* A breath nitric oxide test system is a device intended to measure fractional nitric oxide in human breath. Measurement of changes in fractional nitric oxide concentration in expired breath aids in evaluating an asthma patient's response to anti-inflammatory therapy, as an adjunct to established clinical and laboratory assessments of asthma. A breath nitric oxide test system combines chemiluminescence detection of nitric oxide with a pneumotachograph, display, and dedicated software.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance entitled ''Class II Special Controls Guidance Document: Breath Nitric Oxide Test System.'' See § 862.1(d) for the availability of this guidance document.

Dated: June 23, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–16953 Filed 7–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4393]

VISAS: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Personal Appearance

AGENCY: Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule brings Department regulations into line with, and allows further expansion of, post-9/11 policy guidance issued by the Department that has increasingly restricted the number of instances in which the interview of a nonimmigrant visa applicant may be waived. The regulation significantly reduces the number and kind of situations in which the usual requirement that a nonimmigrant visa applicant appear before an officer for a personal interview may be waived by the consular officer, while making express the Department's authority to set interview policies centrally. The Department is taking this regulatory action in order to further develop the new legal framework necessary to support a series of steps undertaken in order to more adequately ensure the security and integrity of nonimmigrant visa application and issuance procedures. Upon publication of this rule, certain visa applicants who previously may have had their personal appearance before a consular officer for the purpose of applying for a nonimmigrant visa waived will be required by regulation to make such an appearance to be interviewed. In practice, however, many of these applicants are already being interviewed, based on internal Department guidance or decisions made at consular posts.

DATES: *Effective date:* This rule is effective August 1, 2003.

Comment date: Written comments may be submitted within 60 days of the date of publication of this document in the **Federal Register**.

ADDRESSES: Written comments may be submitted, in duplicate, to the Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, or by e-mail to *visaregs@state.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Harper, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1221.

SUPPLEMENTARY INFORMATION:

What Is the Origin of the Waiver of Appearance Rule?

The Immigration and Nationality Act, section 222(e), requires that all applicants for immigrant visas appear personally before a consular officer, but leaves the question of personal appearance of nonimmigrant visa applicants to be defined by regulation. The Department's regulations state a usual requirement of personal appearance by nonimmigrant visa applicants, but for at least forty years have defined a range of applicants whose appearance may be waived by the consular officer—*i.e.*, granted a ''personal appearance waiver'' or ''PAW.''

What Change Is Being Made?

Because of heightened security concerns in the period immediately following September 11, the Department undertook a thorough review of its visa application and issuance procedures. As a result of that review, consular officers have begun to interview a much larger percentage of nonimmigrant visa applicants than they did prior to September 11, both in response to Department internal guidance and as a result of decisions made at consular posts. Because of the continuing need to ensure that the visa process is focused on security concerns, the Department believes it is desirable to codify the changed practice into regulation and to provide a regulatory basis for further adjusting the interview exemptions through centralized direction, as appropriate. This rule is intended to reflect the current scope and use of consular and Departmental personal appearance waiver authority. This amended version of the regulation generally permits waivers of the interview by consular officers in significantly fewer kinds of cases than the regulation being amended. The one exception is that the regulation raises the age of children who may qualify for consular officer interview waivers from age 14 to age 16. Consular officers will no longer have broad discretion under regulation to grant PAWs with respect to applicants for B, C–1, H–1, I, J and crew visas. In certain circumstances, however, officers will have discretion to grant PAWs for applicants for any category of nonimmigrant visa who have previously been issued a visa in the same category for which they are applying. The amended regulation continues consular authority for granting PAWs to diplomats and officials of international organizations. Further, it will allow the Deputy Assistant Secretary for Visa Services to waive the personal appearance requirement in specific situations, *i.e.*, when the Department determines, centrally, that the waiver would not be inconsistent with homeland security interests. Thus, the regulation effectively shifts to the Department authority to make a number of interview waiver decisions previously made at consular posts.

Which Applicants May Still Benefit From a Consul's Authority To Waive Personal Appearance?

Under the revised regulation, a consular officer may waive the personal appearance of a visa applicant in six specific categories. These are: (1) Children age 16 and under; (2) persons age 60 years or older; (3) most of the applicants within a class of nonimmigrants classifiable under the visa symbols A, C–2, C–3, G, or NATO (with the exception of attendants, servants and personal employees); (4) aliens applying for diplomatic or official visas, as defined in 22 CFR 41.26 and

41.27, respectively; (5) applicants who within twelve months of the expiration of their previous visa are seeking re-issuance of a nonimmigrant visa in the same classification at the consular post of the alien's usual residence, and for whom the consular officer has no indication of any noncompliance with U.S. immigration laws and regulations, and (6) aliens for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances, as determined by the consular officer.

Experience shows that applicants in the first and second categories pose very little if any threat to our security. Persons in the third and fourth categories, diplomats and officers or employees of international organizations and their immediate families are ordinarily very well known to embassy staff members, or there is extensive background information available concerning them. In addition, international law, comity and reciprocity with regard to official personnel may appropriately be taken into account. In the fifth category, the previous personal appearance by and interview of the applicant would make it unlikely that further appearance and interview would reveal any basis for refusal. Applicants in the sixth category, except for those cases based on medical issues, will generally be important contacts of embassy officers and therefore well known to the embassy. It is important to understand, however, that, although the consular officer has discretion to waive personal appearance for an individual falling in one of the six categories, waiver is never required.

What Other Waiver Authority May Be Exercised?

In addition to the waiver authority granted to consular officers in the six specific categories listed above, as mentioned, the Deputy Assistant Secretary for Visa Services will have the authority to waive the requirement for personal appearance for a class of individuals when the Deputy Assistant Secretary is satisfied that the waiver is in the national interest or involves unusual circumstances.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as an interim rule, with a 60-day provision for post-promulgation public comments, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). It is dictated by the necessity of additional controls over the documentation and entry of aliens at this time, in light of the continuing threat of terrorist attacks on the United States and, as noted, is bringing the Department's regulation into line with practices that are already generally in effect through the discretionary exercise of existing waiver authority.

Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Department of State hereby certifies that it is not expected to have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department does not consider this rule a ''significant regulatory action'' under Executive Order 12866, section 3(f) Regulatory Planning and Review. Nevertheless, the Department has submitted the rule to the Office of Management and Budget for its review.

Executive Order 13132

This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 41

Aliens, Passports and Visas.

■ Accordingly, for the reasons discussed in the preamble, Part 41 is amended as follows:

PART 41—[AMENDED]

■ 1. The authority citation for part 41 continues to read:

Authority: 8 U.S.C. 1104; Public Law 105–277, 112 Stat. 2681 *et seq.*

■ 2. Revise section 41.102 to read as follows:

§ 41.102 Personal appearance of applicant.

(a) *Personal* appearance before a consular officer is required except as otherwise provided in this section. Except when the requirement of personal appearance has been waived pursuant to paragraph (b) or (c) of this section, each applicant for a nonimmigrant visa must personally appear before and be interviewed by a consular officer, who shall determine on the basis of the applicant's representations, the visa application and other relevant documentation:

(1) The proper nonimmigrant classification, if any, of the alien; and

(2) The alien's eligibility to receive a visa.

(b) *Waivers of personal appearance by consular officers.* Unless otherwise instructed by the Deputy Assistant Secretary of State for Visa Services, a consular officer may waive the requirement of personal appearance in the case of any alien who the consular officer concludes presents no national security concerns requiring an interview and who:

(1) Is a child 16 years of age or under;

(2) Is a person 60 years of age or older;

(3) Is within a class of nonimmigrants classifiable under the visa symbols A–1, A–2, C–2, C–3, G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 and who is seeking a visa in such classification;

(4) Is an applicant for a diplomatic or official visa as described in §§ 41.26 and 41.27 of this chapter, respectively;

(5) Is an applicant who within 12 months of the expiration of the applicant's previously issued visa is seeking re-issuance of a nonimmigrant visa in the same classification at the consular post of the applicant's usual

residence, and for whom the consular officer has no indication of visa ineligibility or noncompliance with U.S. immigration laws and regulations; or

(6) Is an alien for whom a waiver of personal appearance is warranted in the national interest or because of unusual circumstances, as determined by the consular officer.

(c) *Waivers of personal appearance by the Deputy Assistant Secretary of State.* The Deputy Assistant Secretary for Visa Services may waive the personal appearance before a consular officer of an individual applicant or a class of applicants if the Deputy Assistant Secretary finds that the waiver of personal appearance is warranted in the national interest or because of unusual circumstances and that national security concerns do not require an interview.

(d) *Unusual circumstances.* As used in this section, unusual circumstances shall include, but not be limited to, an emergency or unusual hardship.

Dated: June 26, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–17044 Filed 7–3–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9069]

RIN 1545–BB06

Depreciation of Vans and Light Trucks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the definition of passenger automobiles for purposes of section 280F(a). These temporary regulations affect certain taxpayers that use vans and light trucks in their trade or business.

DATES: These regulations are effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 280F of the Internal Revenue Code of 1986 (Code).

Explanation of Provisions

Section 280F(a) limits annual depreciation deductions for passenger automobiles in order to discourage overspending on passenger automobiles purchased for use in business. For the 2003 taxable year, these limitations delay a portion of the otherwise allowable depreciation deductions for passenger automobiles with a purchase price above $15,300 (for passenger automobiles qualifying for additional first-year depreciation under section 168(k)(1), added by the Job Creation and Worker Assistance Act of 2002 (JCWAA), or under section 168(k)(4), added by Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), the delay affects depreciation deductions for vehicles that cost more than $17,500 or $17,850, respectively). Passenger automobiles are defined in section 280F(d)(5)(A) as any 4-wheeled vehicle which is manufactured primarily for use on public streets, roads, and highways, and which is rated at 6,000 pounds unloaded gross vehicle weight (or, in the case of a truck or van, 6,000 pounds gross vehicle weight) or less. Section 280F(d)(5)(B) provides exceptions from this definition, and allows the Secretary to promulgate regulations to exclude trucks and vans from the definition of passenger automobiles.

While a basic automobile may be fully depreciated over five years under these rules, small business advocates have suggested that taxpayers with a valid business need for a van or light truck cannot fully depreciate a basic van or light truck within the standard five-year recovery period. Treasury and the IRS recognize that these vehicles generally cost more than other passenger automobiles and that even the most basic van or light truck may be subject to the section 280F(a) depreciation limits.

Some commenters on this issue suggested that the dollar limits on trucks and vans should be raised to reflect the higher cost of these vehicles. Although there is no general authority in section 280F to raise the dollar limits for specific types of vehicle, section 280F(d)(7) provides for adjustments to the dollar limits to reflect automobile price inflation since 1988. Moreover, much of the disparity between the cost of vans and light trucks and the cost of other passenger automobiles is attributable to the higher rate of price inflation for vans and light trucks since 1988. Accordingly, the revenue procedure setting forth the inflation-adjusted dollar limits for vehicles placed in service in 2003 will respond to the suggestion by providing higher dollar limits for vans and light trucks to reflect this higher rate of price inflation.

In addition, as noted above, JCWAA and JGTRRA have provided temporary relief by substantially increasing the first-year depreciation limits for all new passenger automobiles, including vans and light trucks. Thus, a taxpayer electing the 50-percent additional first-year depreciation permitted by JGTRRA can recover the full cost of a new automobile costing nearly $23,000 over the five-year recovery period. The revenue procedure described above would provide an even higher limit for new vans and light trucks.

Comments also suggested that Treasury and the IRS should exercise the regulatory authority in section 280F(d)(5)(B)(ii) to provide an exclusion from the section 280F(a) depreciation limitations for all trucks and vans or for vehicles that are used in a specified manner. Treasury and the IRS have concluded that a limited exclusion is appropriate so long as it is based on objective factors and does not provide an incentive to purchase a truck or van when a less-expensive automobile would be sufficient to fulfill the taxpayer's business needs. Accordingly, the temporary regulations exclude from the definition of passenger automobile any truck or van that is a qualified nonpersonal use vehicle as defined in § 1.274–5T(k) of the Income Tax Regulations. Qualified nonpersonal use vehicles include not only the trucks and vans listed in § 1.274–5T(k)(2), but also trucks and vans described in § 1.274–5T(k)(7) (relating to trucks and vans that have been specially modified, such as by installation of permanent shelving and painting the vehicle to display advertising or the company's name, so that they are not likely to be used more than a de minimis amount for personal purposes). These specially manufactured or modified vehicles do not provide significant elements of personal benefit, and a taxpayer is unlikely to purchase these vehicles unless motivated by a valid business purpose that could not be met with a less-expensive vehicle. We welcome comments on other options that provide administrable objective standards and are consistent with the statutory purpose.

The temporary regulations also strike from § 1.280F–6T language relating to expired provisions of the Code.

Effective Date

The temporary regulations apply to property placed in service on or after July 7, 2003.

Special Analyses

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

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.280F–6T also issued under 26 U.S.C. 280F. * * *

■ 2. Section 1.280F–6T is amended as follows:

■ 1. Paragraph (a)(1) is amended by removing the language ''the amount of any credit allowable under section 38 to the employee or''.

■ 2. Paragraph (c)(3)(iii) is revised.

■ 3. Paragraph (d)(3) is amended by removing the language ''investment tax credit or'' and ''the investment tax credit and''.

■ 4. The authority citation at the end of the section is removed.

The revision reads as follows:

§ 1.280F–6T Special rules and definitions (temporary).

* * * * *

(c) * * *

(3) * * *

(iii) Truck or van that is a qualified nonpersonal use vehicle as defined under § 1.274–5T(k).

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: June 27, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–17085 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20 and 25

[TD 9068]

RIN 1545–A031

Definition of Guaranteed Annuity and Lead Unitrust Interests

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document amends the income, estate, and gift tax regulations to conform to the Tax Court's decision in *Estate of Boeshore* v. *Commissioner.* In *Estate of Boeshore,* the Tax Court held a certain provision of the Estate Tax Regulations invalid to the extent that it disallows a deduction for the value of a charitable unitrust interest if the charitable interest is preceded by a noncharitable interest that is in the form of a unitrust interest. This action is necessary to conform the income, estate, and gift tax regulations to the Tax Court's decision in *Estate of Boeshore.* The effect of these regulations is to allow an income, estate, or gift tax charitable deduction for charitable annuity or unitrust interests that are preceded by a noncharitable unitrust or annuity interest.

DATES: The regulations are effective July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On July 23, 2002, the Treasury Department and the IRS published in the **Federal Register** (67 FR 48070) a notice of proposed rulemaking (REG–115781–01) conforming the income, gift, and estate tax regulations to the Tax Court's decision in *Estate of Boeshore* v. *Commissioner,* 78 T.C. 523 (1982), *acq. in result* (1987–2 C.B. 1). Specifically, the existing regulations under section 170, 2055, and 2522 governing charitable guaranteed annuity and unitrust interests were proposed to be amended to eliminate the requirement that the charitable interest commence no later than the commencement of a noncharitable interest that is in the form of a guaranteed annuity or unitrust interest. The regulations will continue to require that any amounts payable for a private purpose before the expiration of the charitable annuity or unitrust interest either must be in the form of a guaranteed annuity or unitrust interest or must be payable from a separate group of assets devoted exclusively to private purposes.

No public hearing was requested or held, but one written comment was received. The commentator suggested that any charitable lead interest in a charitable remainder trust should be taken into account along with the remainder interest for purposes of satisfying the10 percent test contained in sections 664(d)(1)(D) and (d)(2)(D) of the Internal Revenue Code. Among the requirements for a trust to qualify as a charitable remainder trust, sections 664(d)(1)(D) and (d)(2)(D) provide that the present value of the remainder interest must be equal to at least 10 percent of the initial fair market value of all property placed in the trust. Because the statutory requirement is based solely on the value of the remainder interest, it is not possible to take into account any lead interests that pass to charity for purposes of satisfying this requirement. Accordingly, this document adopts final regulations with respect to the notice of proposed rulemaking without any changes.

Effect on Other Documents

The following publication is revoked as of July 7, 2003. Rev. Rul. 76–225 (1976–1 C.B. 281).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information requirement on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Drafting Information

The principal author of these proposed regulations is Susan Hurwitz of the Office of the Associate Chief Counsel (Passthroughs and Special

Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 20, and 25 are amended as follows:

PART 1—INCOME TAXES

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

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

■ 2. Section 1.170A–6 is amended as follows:
■ 1. Paragraph (c)(2)(i)(E) is revised and the example following paragraph (c)(2)(i)(E) is removed.
■ 2. Paragraph (c)(2)(ii)(D) is revised.
The revisions read as follows:

§ 1.170A–6 Charitable contributions in trust.

* * * * *

(c) * * *
(2) * * *
(i) * * *

(E) Where a charitable interest in the form of a guaranteed annuity interest is transferred after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(i)(E), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

(ii) * * *

(D) Where a charitable interest is in the form of a unitrust interest, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(ii)(D), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ 3. The authority citation for part 20 continues to read in part as follows:

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

■ 4. Section 20.2055–2 is amended as follows:
■ 1. Paragraph (e)(2)(vi)(f) is revised.
■ 2. Paragraph (e)(2)(vii)(e) is revised.
■ 3. In paragraph (f)(2)(iv), *Example (4)* is removed.
The revisions read as follows:

§ 20.2055–2 Transfers not exclusively for charitable purposes.

* * * * *

(e) * * *
(2) * * *
(vi) * * *

(*f*) Where a charitable interest in the form of a guaranteed annuity interest is in trust, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vi)(*f*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. *See* § 53.4947–1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

(vii) * * *

(*e*) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (e)(2)(vii)(*e*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ 5. The authority for part 25 continues to read in part as follows:

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

■ 6. Section 25.2522(c)–3 is amended as follows:
■ 1. Paragraph (c)(2)(vi)(*f*) is revised.
■ 2. Paragraph (c)(2)(vii)(*e*) is revised.
■ 3. In paragraph (d)(2)(iv), *Example (4)* is removed.

The revisions read as follows:

§ 25.2522(c)–3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(*f*) Where a charitable interest in the form of a guaranteed annuity interest is in trust, and the gift of such interest is made after May 21, 1972, the charitable interest generally is not a guaranteed annuity interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable annuity interests. There are two exceptions to this general rule. First, the charitable interest is a guaranteed annuity interest if the amount payable for a private purpose is in the form of a guaranteed annuity interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private annuity as opposed to the charitable annuity. Second, the charitable interest is a guaranteed annuity interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vi)(*f*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

(vii) * * *

(*e*) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest generally is not a unitrust interest if any amount may be paid by the trust for a private purpose before the expiration of all the charitable unitrust interests. There are two exceptions to this general rule. First, the charitable interest is a unitrust interest if the amount payable for a private purpose is in the form of a unitrust interest and the trust's governing instrument does not provide for any preference or priority in the payment of the private unitrust interest as opposed to the charitable unitrust interest. Second, the charitable interest is a unitrust interest if under the trust's governing instrument the amount that may be paid for a private purpose is payable only from a group of assets that are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). For purposes of this paragraph (c)(2)(vii)(*e*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2003.

Gregory F. Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–17087 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA98

Improving and Eliminating Regulations, Phase 5, Miscellaneous Technology Improvements (Methane Testing)

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule provides an alternative method of compliance with the requirement for qualified persons to make periodic methane tests at face areas from under permanent roof support, using extendable probes or other acceptable means. The rule applies only during roof bolting activities in room and pillar mining operations which use continuous mining machines. It allows methane tests to be made by sweeping a probe inby the last roof support, provided that a number of requirements for roof support, ventilation, and continuous methane monitoring at the roof bolting machine are met to protect the miners. The rule results in increased mining efficiency and provides an equivalent level of safety to miners.

DATES: This rule becomes effective on August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, *Nichols-Marvin@msha.gov,* (202) 693–9440 (telephone), (202) 693–9441 (facsimile).

This rule is available in alternative formats, such as a large print version or an electronic file, and is also available at *http://www.msha.gov,* under ''Statutory and Regulatory Information.''

SUPPLEMENTARY INFORMATION:

A. Background

As part of a comprehensive revision of ventilation standards, MSHA published the existing rule, § 75.362, On-shift Examination, on March 11, 1996 (61 FR 9764). Section 75.362(d)(1) requires that a qualified person test for methane at the start of each shift at each working place before electrically powered equipment is energized, taken into or operated in a working place; immediately before equipment is energized, taken into or operated in a working place; and at 20-minute intervals, or more often if required in the approved ventilation plan at specific location, during the operation of equipment in the working place. Section 75.362(d)(2) requires that these methane tests be made at the face from under permanent roof support, using extendable probes or other acceptable means. On September 25, 2002, in response to a joint petition from a labor and an industry group, MSHA published the proposed rule (67 FR 60611) to allow the alternative method of testing for methane. The comment period closed on November 25, 2002. Four commenters responded to the proposed rule. MSHA received no hearing requests.

On-shift examinations of working sections have long been accepted as a standard safety practice in coal mining due to the variable nature of mining conditions and the potential for hazards to develop quickly. These examinations ensure that the environment is safe while miners work during the shift by identifying existing or developing hazards, and permitting rapid correction of hazardous conditions before miners are endangered. Methane tests are a key part of the on-shift examination.

Methane is an invisible, odorless, and highly flammable product of coal off-gassing which liberates from the coal at

the face, roof, ribs and floor, as well as from pieces of broken coal that have been crushed by the mining machine. A five to 15 per cent level of methane in the air is capable of igniting, which in turn can result in a fire or an explosion. Frictional methane ignitions in mining can occur when sparks or hot metal fragments from the drill bits on mining equipment or roof bolting machines contact the liberated methane. Ventilation, as provided by an approved ventilation plan, dilutes and removes the liberated methane.

Over the years, the coal mining industry has expanded its use of a number of mining methods that increase production. One such method is deep cut mining, also called extended cut mining, where a continuous mining machine makes cuts greater than 20 feet into the coal seam. Formerly, when most continuous mining machines were operated by an on-board miner positioned in the cab at the rear of the machine, the cut was limited to the distance between the cutting head and the cab, or about 20 feet, to protect the miner in the cab from hazards associated with unsupported roof. Today, most continuous mining machines are manufactured to operate with remote control devices, which allow the machines to cut well beyond 20 feet into the coal seam while the miner stands under supported roof and in an area of reduced coal dust.

Most of the mining operations today use continuous mining machines that make deep cuts. These longer distances to the face make monitoring and removing methane more difficult. The devices used to test for methane often consist of a methane detector attached to either a pole which may be held by the miner or an extension device which the miner slides forward to the face. In mining sections with deep cuts, the longer probe arrangements can telescope 40 feet or more. The comments and testimony from the 1996 rulemaking include suggestions that back injuries could result from holding the longer probes, although some miners testified that the arrangements are practicable without causing injuries. MSHA is not aware of any empirical testing concerning injuries from the use of these probe arrangements; however, we are mindful of the importance of seeking compliance alternatives that will ensure safe working practices.

Generally, miners begin a deep cut operation by directing the ventilation to the face, usually by positioning tubes or curtains. A qualified person then makes a methane test, and the continuous mining machine is moved into the area. The continuous mining machine generally cuts from 20 to 40 feet into the coal seam. When the coal is mined from the cut, the continuous mining machine is backed out, and the ventilation may be adjusted to redirect more air to the next face area.

The roof bolting machine then moves into the working place. Virtually every roof bolting machine in operation today is equipped with an automated temporary roof support (ATRS) system. When the ATRS is deployed, steel hydraulic jacks position a support against the roof. This configuration provides the protection of temporary roof support for the miners who are positioned at the drill head control to install the roof bolts. Once the ATRS is fully deployed, the miner begins the installation process. Generally four or more roof bolts are installed across the width of the cut. When the row of roof bolts is installed, the roof bolting machine advances approximately four feet, depending on the roof bolting plan and machine design, and the process is repeated until the entire roof is supported up to the face.

During this entire process, a qualified person, as defined in § 75.151, makes a methane test at the face before electrically powered equipment is energized, taken into or operated in the workplace, and at intervals not exceeding 20 minutes during the operation of this equipment.

In 1997 MSHA tested an arrangement for making methane tests at the face by magnetically attaching a portable methane detector to the head of the continuous mining machine, which would be trammed forward by remote control to the face for the test. However, similar arrangements for making methane tests from roof bolting machines are not practicable because roof bolting machines do not operate by remote control.

The National Institute for Occupational Safety and Health (NIOSH) conducted a study (''Comparison of Methane Concentrations at a Simulated Coal Mine Face During Bolting'') which examined issues related to methane in working places during roof bolting. In 1999, NIOSH presented the study at the 8th U.S. Mine Ventilation Symposium, sponsored by the Society of Mining Engineers' Underground Ventilation Committee. The testing consisted of gallery simulations using a model roof bolting machine fitted with instrumentation to record methane levels at various locations in the simulated working place under different methane release conditions. A part of this study examined MSHA's 38 accident investigation reports from 1981 to 1994 which involved methane ignitions at roof bolting machines. The ignition source was at the roof bolting machine in 37 of these accidents, and no ignition source was identified in the one remaining accident. The report shows that a combination of continuous monitoring near the drill head together with methane tests inby the roof bolting machine would be effective in identifying methane hazards when the primary source of methane liberation is at the drill hole.

During the period 1994 through 2001, MSHA investigated 16 accidents which involved methane ignitions at roof bolting machines. Twelve of these accidents directly involved roof drilling or bolt installation. Consistent with the ignitions studied by NIOSH, the accidents involving roof drilling or bolt installation occurred when a hot drill bit being pulled out of the drill hole ignited a flammable methane-air mixture, or when the miner inadvertently drilled through metal roof straps or encountered harder than normal rock strata in the mine roof.

In November, 1998, the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA) jointly recommended that MSHA amend the current rule to allow the option of making methane tests by sweeping a probe 16 feet inby the last area of supported roof, provided that a number of mandatory precautions are taken, such as providing the roof bolting machine with both an integral ATRS and a permanently-mounted continuous methane monitor. The joint recommendation cited the draft NIOSH study, and UMWA and BCOA further stated that the suggested compliance option would promote greater safety. MSHA believes that this optional method for methane testing does not diminish safety provided in the existing rule, and is therefore publishing this final rule, which is largely based on the NIOSH research and the joint recommendation of labor and industry. The rule is designed to protect the miner and to be easily integrated into the mining cycle.

I. Discussion of the Rule

A. Paragraph 75.362(d)(2)

This final rule adds a new subparagraph after the existing § 75.362(d)(2) to allow an optional method for making methane tests during roof bolting activities in room and pillar mining operations using continuous mining machines. Thus the phrase ''Except as provided in subparagraph 75.362(d)(3)'' is added to the beginning

of § 75.362(d)(2) to clearly show that this option follows.

B. Paragraph 75.362(d)(3)

This final subparagraph allows an alternative method of compliance with subparagraph (d)(2) during roof bolting. This section remains unchanged from the proposed rule. The required methane tests may be made by using a probe or other acceptable means to sweep not less than 16 feet inby the last area of permanently supported roof, provided certain requirements are met, as outlined in subparagraphs 75.362(d)(3)(i) through (vi). MSHA believes that testing at the 16 foot inby minimum distance provides protection equivalent to the current requirement and does not diminish safety. The probe extends a sufficient distance into the unsupported area to test for methane which may be accumulating inby the roof bolting machine.

Certain difficulties exist in actually making the tests under the current standard. The longer probe arrangements required to reach the face of a deep cut can be unwieldy, and therefore difficult to position accurately at the face. Methane tests at the face currently must be made with the detector positioned at least 12 inches from the roof, rib and face.

The NIOSH study determined that:

> Compliance with the methane standard would be easier if there were alternative sampling locations outby the face. Outby sampling locations closer to the bolting operation could also provide better measurements of methane when the primary liberation is the drill hole.

The study further determined that:

> The primary way to assure that methane concentrations are not ignitable is to monitor methane levels near the drill hole. Measurements must also be taken during bolting to determine methane concentrations at the face.

Prior to the 1996 rulemaking on ventilation standards, methane tests were made at the last permanent roof support, unless the approved ventilation plan required the tests to be made closer to the working face by using extendable probes or other acceptable means. When MSHA published the proposed revisions in 1994, some commenters expressed concerns about possible higher accumulations of methane in the deep cuts, particularly at the face area, where the freshly exposed surfaces allow more methane to liberate. These commenters wanted the methane tests to be made as close to the working face as practicable without endangering the miner. MSHA agreed with these comments. Additionally, data from research done by MSHA and the former Bureau of Mines during the prior 25 years, such as Bureau of Mines Report of Investigation 7223, ''Face Ventilation in Underground Bituminous Coal Mines,'' published in 1969, suggested higher methane concentrations near the face area. The final rule published in 1996 required that methane tests be made at the face area.

The existing requirement to make all methane tests at the face area was intended to provide adequate testing in extended cuts. However, as stated above, the ignition hazard during roof bolting is not necessarily at the same location as during cutting, that is, the face area. The conditions required for an ignition may be present at the drill head when the miner drills into the roof. Methane tests made at a minimum distance of 16 feet inby the last area of permanently supported roof, augmented with the continuous methane monitor on the ATRS, provide adequate assurance that hazardous levels of methane are not present or accumulating either in the cut or around the roof bolting machine at the time the roof bolter is drilling. The alternative testing method does not diminish safety and provides at least equivalent protection by supplementing methane tests inby the area where roof bolting takes place with continuous monitoring at the roof bolting machine where methane ignitions have occurred at the time that drilling is occurring. This optional compliance method may only be used if the conditions of subparagraphs § 75.362(d)(3)(i) through (vi) are met, as discussed below.

Several commenters suggested that the 20-minute methane tests should be made either by sweeping a shorter distance, *e.g.*, two rows of bolts or ten feet, or by using a handheld methane detector to make the test at the last area of supported roof. Two of these commenters suggested that testing with the shorter probe or the hand-held methane detector at more frequent intervals, such as before or after the roof bolting machine advances, would ensure protection.

One commenter stated that there was no reason to select a distance of 16 feet. MSHA believes that the combination of 16-foot minimum sweeps to test for methane accumulating in the cut and continuous methane monitoring at the site where drilling occurs provides the level of protection that is equivalent to the current requirement and does not diminish safety. As discussed above, methane liberates at higher rates from the freshly exposed surfaces at the face area than from outby areas. In addition, ventilation controls ordinarily do not extend substantially beyond the roof bolting machine. Accordingly, it is prudent to perform methane tests to ensure that bodies of methane are not accumulating in the cut. Testing with a shorter probe or with a hand-held detector, as suggested by these commenters, would not provide adequate assurance that methane is not accumulating further in the cut. Finally, the joint recommendation of labor and industry, which was based on the NIOSH study, identified 16 feet as an appropriate testing distance. For these reasons, MSHA has not revised the testing distance in the final rule. However, based on the conditions at a particular mine, an operator may, as a mine procedure, specify that testing in addition to the requirements of this final rule would be of value.

Other commenters suggested that the probes required for a 16-foot sweep would be unwieldy, thereby compromising the accuracy of the test. MSHA notes that 20-foot probes have been used in the coal industry for many years. Therefore, MSHA concludes that the probe arrangements required to sweep 16 feet inby are manageable and do not present any hazards to miners.

One commenter suggested that the methane tests made during roof bolting should be made between six and twelve inches from the roof, at the roof bolting machine, immediately before each row of roof bolts is installed, noting that the likely ignition source would be close to the roof. The commenter added that the potential hazard during roof bolting is not the same as that presented during mining (and addressed by testing at the face). MSHA believes that the inby methane hazard during roof bolting is comparable to that found inby during the mining process. Testing for methane at a minimum distance of 12 inches from the roof has been an MSHA requirement for a number of years, and the procedure has proven to be effective. Therefore, this provision remains unchanged.

A commenter recommended expanding the rule to allow dual methane monitors mounted on the continuous mining machine as an alternative method to test for methane while the continuous mining machine is operating. This recommendation has not been addressed because this change is beyond the scope of the proposal.

C. Subparagraph 75.362(d)(3)(i)

This subparagraph of the final rule requires the roof bolting machine to be equipped with an integral automated temporary roof support (ATRS) system if the alternative testing method is used, and further requires the ATRS to meet

the requirements of § 75.209. Section 75.209 provides technical requirements for ATRS systems, which are installed on virtually all roof bolting machines. The ATRS provides the miner with an additional level of protection during roof bolting operations. This final section is unchanged from the proposed rule. No comments were received concerning this provision.

D. Subparagraph 75.362(d)(3)(ii).

This subparagraph of the final rule requires the roof bolting machine to have a permanently mounted methane monitor. The subparagraph is unchanged from the proposed rule. MSHA believes that a methane monitor on the roof bolting machine is an effective method of testing for methane at a potential principal ignition source during roof bolting operations, and is consistent with the NIOSH study determinations.

The subparagraph further requires that the methane monitor complies with the requirements of existing §§ 75.342(a)(4), 75.342(b) and 75.342(c). Section 75.342(a)(4) establishes maintenance and calibration requirements, requires training for miners who perform this maintenance and calibration, and establishes recordkeeping and records retention requirements for the calibration tests. While this final rule allows an alternative method for making methane tests, it also requires the methane monitors on the roof bolting machines to be properly maintained at all times, and thus does not allow the use of a methane detector and probe in lieu of a poorly maintained or inoperative methane monitor on the roof bolting machine. Section 75.342(b) requires the methane monitor to give a warning signal when the air-methane concentration reaches 1.0 per cent, and further requires this warning signal to be visible to someone who is able to de-energize the machine to which the monitor is mounted. Section 75.342(c) requires the methane monitor to automatically de-energize the machine to which it is mounted when the methane-air mixture reaches 2.0 per cent or when the monitor is not operating properly. The warning signal and automatic de-energization capability provide an additional measure of protection to miners.

Although methane monitors can be magnetically mounted on roof bolting machines, this subparagraph requires that they be permanently mounted for reliable operation and to assure that the sensor remains in an effective location. Although MSHA does not anticipate that permanently mounting the methane monitor on the ATRS would require recertification of the ATRS by the manufacturer, certification issues may be avoided by using clamping brackets, steel strapping, or high-strength adhesives to permanently mount the methane monitor to the ATRS. MSHA anticipates that equipment manufacturers and rebuilders will incorporate provisions into the ATRS design to accommodate the permanently mounted monitors. Additionally, 30 CFR part 18 requires MSHA approval before changes are made to approved equipment to ensure that permissibility of the equipment to operate in a gassy atmosphere has not been compromised. Section 18.81 outlines the requirements and application procedure for MSHA approval of this field modification.

E. Subparagraph 75.362(d)(3)(iii).

This subparagraph of the final rule sets requirements for the position of the methane monitor sensor on the ATRS. The sensor must be mounted in a protected position near the inby end of the ATRS support; it must be within 18 inches of the longitudinal center of the ATRS; and it must be positioned at least 12 inches from the roof when the ATRS is fully deployed.

MSHA's requirement to mount the sensor near the inby end of the ATRS is based on the NIOSH study. In that study, NIOSH found the highest statistical correlation to be between face methane concentration and a point which would be near the downwind end of the ATRS. The requirement to position the methane sensor near the longitudinal center of the ATRS is intended to protect the methane sensor from damage during the mining cycle. Finally, the requirement for the methane sensor to rest at least 12 inches below the roof when the ATRS is deployed reflects the standard practice of measuring methane at least 12 inches from the roof to obtain a result representative of the general environment being measured. MSHA believes this distance achieves a balance between effectiveness and practicality.

The proposed rule would have required the methane sensor to be mounted ''on the inby end and within 18 inches of the longitudinal center of the ATRS.'' One commenter expressed a concern that this wording could be interpreted to mean requiring the methane sensor to be mounted on the front of the ATRS itself, where it would be subject to damage and would be isolated from potential methane accumulations nearer to the drill assembly. The language from the proposed rule has been modified to address this concern by requiring the sensor to be mounted ''near the inby end and within 18 inches of the longitudinal center of the ATRS support.'' The rule provides some flexibility in the position of the sensor with the intent of placing the sensor at a location where it will be protected from damage while providing effective detection of methane near the most likely ignition source at the drilling assembly.

The continuous methane monitor mounted to the roof bolting machine, together with the probe used to sweep inby for methane, comprise a two-element system for methane detection. MSHA believes this two-element system is effective in detecting methane in the zone containing the most likely ignition source.

F. Subparagraph 75.362(d)(3)(iv)

This subparagraph of the final rule specifies the frequency of manual methane tests, and is consistent with § 75.362(d)(1)(iii), which in turn is derived from the statutory provision requiring methane tests to be made at least every 20 minutes while electrically powered equipment is operated (Mine Act, section 303(h)(1)). Additionally, the subparagraph specifies the location of the qualified person making the test.

In addition to the existing provisions contained in the final rule, the proposed subparagraph included the statement, ''The manual methane test must be made immediately before the roof bolting machine enters the working place unless the last test was made within 20 minutes.'' Two commenters disagreed with this provision. One of these commenters suggested that the wording was inconsistent with 30 CFR 75.362(d)(1). This commenter further discussed several examples of how the wording of the proposed rule could introduce confusion and how miners could tend to assume that test had been made. MSHA agrees with these commenters, and has removed this provision from the final rule. However, this test may be made using the 16-foot minimum inby sweep, as described in the above analysis for subparagraph 75.362(d)(3). The combination of the 16-foot minimum sweeps and the continuous methane monitor on the roof bolting machine ensures an accurate determination of the methane levels present during roof bolting. A further consideration is the rate of methane liberation during roof bolting. That is, methane liberates from the coal at a higher rate during the time that the coal is being cut. During that time, ventilation is directed toward the face, with the tubes, curtains, or other ventilation devices positioned behind

the continuous mining machine and moving forward as the coal is cut. Since coal is not actively mined in the cut during roof bolting, methane liberation decreases. For these reasons, MSHA believes this alternative method does not diminish safety.

The proposed rule required the manual methane test to be made either ''from under the last permanent roof support'' or from the roof bolter's work position protected by the deployed ATRS. The final rule changes this language to require making the test either ''from under permanent roof support'' or from the roof bolter's work position protected by deployed ATRS. This change allows the final rule to better conform to MSHA's existing roof control rules and policies because most approved roof control plans do not generally permit miners past the second to the last row of permanent roof supports.

G. Subparagraph 75.362(d)(3)(v)

Subparagraph 75.362(d)(3)(v) of the final rule requires that, once a methane test is made at the face, all subsequent methane tests must be made at the face. As the roof bolting machine advances toward the face, the probe used for the methane test will eventually reach the face. A number of rows of roof bolts will then be installed before the roof bolting machine reaches the face area and the cut is completely bolted. Methane tests will be made at the face area while these final rows of roof bolts are installed.

One commenter suggested deleting this provision as part of an overall suggestion to test with a hand-held methane detector at the last permanent roof support. Another commenter suggested phrasing the rule so that testing at the face would be required when the roof bolting machine reaches a distance from the face equal to two rows of bolts. This distance would generally be about eight feet. As stated above, MSHA believes that the combination of 16-foot inby sweeps to test for methane accumulating in the cut and continuous methane monitoring at the roof bolting machine provides a level of protection that does not diminish safety. Testing with a hand-held methane detector at the last working place or with a shorter probe would not provide adequate assurance that methane is not accumulating further in the cut. Therefore, this subparagraph remains unchanged from the proposed rule.

H. Subparagraph 75.362(d)(3)(vi)

Subparagraph 75.362(d)(3)(vi) of the final rule allows the district manager to require that the ventilation plan include a minimum air quantity and the position and placement of ventilation controls to be maintained during roof bolting operations. No comments were received on this subparagraph. The final rule is unchanged from the proposed rule.

The NIOSH study, as well as MSHA's experience, shows that ventilation is effective and appropriate during roof bolting operations under certain mining conditions. Some mines liberate substantial quantities of methane, or have a history of ignitions or noncompliance with respirable dust standards for bolting machine operators. The ventilation plans for such mines generally require minimum air quantities to be maintained at the roof bolting machine. In evaluating ventilation plans, district managers will continue to assess these and other factors to determine the necessity for plan parameters for air quantities and ventilation control devices.

The NIOSH study was conducted using ventilating air quantities of 4,000 cfm and 7,000 cubic feet per minute (cfm), with methane released at various points at a rate of five cfm. The study shows that ventilation is effective in removing methane from working areas around roof bolting machines where significant quantities of methane are liberated in the working place and at the face. In these conditions, mine ventilation plans could specify minimum ventilation quantities and the position of the ventilation control devices.

After the NIOSH study was completed, MSHA reviewed the accident reports for all of the 41 reported methane ignitions that occurred at roof bolting machines between 1994 and 1998. The MSHA report, ''Methane Ignitions on Roof Bolters in Underground Coal Mines'' found that all these ignitions occurred in mines that are considered to have the highest methane liberation. Each of these mines liberated over 850,000 cubic feet of methane per day. Section 103(i) of the Mine Act requires MSHA to conduct spot inspections at least every ten working days at mines liberating over 500,000 cubic feet of methane during a 24-hour period, and at least every five working days at mines liberating over one million cubic feet of methane during a 24-hour period.

The MSHA report, as well as MSHA's experience, indicates that most ignitions at roof bolting machines in mines that liberate significant quantities of methane can be avoided by maintaining adequate ventilation during roof bolting. The rule provides an equivalent level of safety as the existing rule and does not diminish safety, while at the same time allowing flexibility by permitting MSHA to set mine-specific requirements through the ventilation plan.

II. Impact Analyses

A. Cost and Benefits: Executive Order 12866

Executive Order 12866 requires regulatory agencies to assess both the costs and benefits of regulations. In making this assessment, MSHA determined that although this final rule will not have an annual effect of $100 million or more on the economy, and therefore is not a significant regulatory action as defined by § 3(f)(1) of E.O. 12866, the rule meets the § 3(f)(4) definition, that is, the rule may ''* * * raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' MSHA completed a Regulatory Economic Analysis (REA) which estimates both the costs and benefits of the rule. This REA is available from MSHA and is summarized below.

The final rule allows an alternative method of methane testing that ensures at least an equivalent level of protection as the existing standard and results in net cost savings of $6.9 million annually to the industry.[1] The alternative testing method augments periodic inby methane tests with continuous methane monitoring at the roof bolting machine. This two-tiered approach assures that hazardous levels of methane are not present or accumulating either inby or at the roof bolting machine.

The inby methane tests are made at least every 20 minutes by sweeping a probe or other acceptable arrangement at least 16 feet inby the last permanent roof support. However, when the probe reaches the face area, the remaining tests are made with the methane detector positioned at least 12 inches from the roof, rib, and face. A probe not longer than 20 feet will allow the qualified person to make this test from a safe position four feet outby the last permanent roof support. The shorter probe arrangements required for the 16-foot sweep are easier to maneuver and cost less than those used to comply with the existing requirements. Additionally, the sweeps can be made more quickly than the test required under the existing rule.

The alternative testing method also requires each roof bolting machine to have both an MSHA-approved, permanently mounted methane monitor

[1] Cost data are provided by MSHA's Regulatory Economic Analysis for this rule, dated January, 2003.

and an integral ATRS system. The methane monitor must meet the maintenance and calibration requirements of § 75.342(a)(4), the warning signal requirements of § 75.342(b), and the automatic de-energization requirements of § 75.342(c). Further, the rule requires the sensor head of the methane monitor to be positioned at a specific location on the ATRS. In addition to continuously monitoring the atmosphere at the roof bolting site, the monitor will warn miners when methane levels reach one per cent, and will de-energize the roof bolting machine when methane levels reach two per cent. This continuous monitoring provision is significant in light of the number of ignitions involving roof drilling or bolt installation. These ignitions generally occur when sparks, hot metal fragments, or hot drill bits ignite a flammable methane-air mixture. They can also occur when the miner inadvertently drills through metal roof straps or encounters harder than normal material in the mine roof.

B. Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Act definition of a ''small business concern'' in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, and after opportunity for public comment, MSHA establishes a definition which is appropriate to the activities of the agency and publishes that definition in the **Federal Register**. For the mining industry, SBA defines ''small'' as having 500 or fewer workers. MSHA has traditionally considered small mines to be those with fewer than 20 workers. To ensure that the rule conforms with the RFA, MSHA analyzed the economic impact on mines with 500 or fewer workers and also on mines with fewer than 20 workers. MSHA concluded that the rule will not have a significant economic impact on a substantial number of small entities under either definition.

C. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the rule does not include any Federal mandate that may result in increased expenditures of more than $100 million incurred by State, local, or tribal governments, or by the private sector.

D. Paperwork Reduction Act of 1995 (PRA)

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) and were issued control numbers pursuant to the Paperwork Reduction Act of 1995 (PRA), as codified at 44 U.S.C. 3501–3520 and implemented by OMB in regulations at 5 CFR part 1320. The PRA defines collection of information as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format.'' All paperwork burden hours and cost data used in this preamble are taken from MSHA's Regulatory Economic Analysis (REA), dated January, 2003. The REA can be accessed at *http://www.msha.gov/regsinfo.htm*.

MSHA estimates that the information collection requirements in this rule will impose a total of 315 paperwork burden hours in the first year, with an annualized burden of 117 hours each year thereafter. The estimated total annualized cost associated with these paperwork burden hours is $4,045.

Two information collection requirements are associated with § 75.362(d)(3)(ii). The first involves obtaining approval for field modifications to permissible electrical equipment, as required by § 18.81, and was approved by OMB as part of Information Collection No. 1219–0066, Permissible Equipment Testing, which expires on July 31, 2005. MSHA's Approval and Certification Center must approve all modifications to permissible equipment (including roof bolting machines) to ensure that permissibility of the equipment to operate in a gassy atmosphere has not been compromised. Each machine model at a mine requires a separate application for approval.

The second information collection requirement associated with § 75.362(d)(3)(ii) involves recording calibrations of methane monitors, as required by § 75.342(a)(4), and was approved by OMB as part of Information Collection No. 1219–0088, Ventilation Plans, Tests, and Examinations in Underground Coal Mines, which expires on March 31, 2004. Each methane monitor must be calibrated at least every 31 days, and a record of the calibration test must be maintained for at least one year from the date of the test.

Additionally, any information collection requirements that would be associated with the ventilation provision of § 75.362(d)(3)(vi) would be approved as part of Information Collection No. 1219–0088. This provision of the final rule imposes no additional paperwork burden.

E. Executive Order 12630 Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. That is, this rule does not involve implementation of any policy with takings implications.

F. Executive Order 13045 Protection of Children From Environmental Health Risks

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks, MSHA has evaluated the environmental health and safety effects that this rule could have on children. MSHA has determined that the rule will not have an adverse impact on children.

G. Executive Order 12988 Civil Justice Reform

MSHA has reviewed Executive Order 12988, Civil Justice Reform, and determined that the rule will not unduly burden the Federal court system. The rule has been written so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

H. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

MSHA certifies that this rule will not impose any substantial direct compliance costs on Indian tribal governments.

I. Executive Order 13132 Federalism

MSHA has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the rule has no ''federalism implications.'' In other words, the rule does not have any 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.

J. Executive Order 13211 Energy

MSHA has reviewed this rule in accordance with Executive Order 13211 regarding the energy effects of Federal regulations, and has determined that the rule does not have any adverse effects on energy supply, distribution, or use.

Therefore, no reasonable alternatives to this action are necessary.

References:

1. Taylor, Charles, *et al.*, ''Comparison of Methane Concentrations at a Simulated Coal Mine Face During Bolting,'' U.S. Department of Health and Human Services, Center for Disease Control, National Institute for Occupational Safety and Health (NIOSH), 1999.

2. Urosek, John E., *et al.*, ''Methane Ignitions on Roof Bolters in Underground Coal Mines,'' U.S. Department of Labor, MSHA, presented at and included in the proceedings of the 8th U.S. Mine Ventilation Symposium, June 11–17, 1999.

List of Subjects in 30 CFR Part 75

Fire Prevention, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mining, ventilation.

■ Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 1. The authority citation for Part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Section 75.362 is amended by adding at the beginning of paragraph (d)(2) the phrase ''Except as provided for in paragraph (d)(3) of this section,'' and by adding paragraph (d)(3) to read as follows:

§ 75.362 On-shift examination.

* * * * *

(d) * * *

(3) As an alternative method of compliance with paragraph (d)(2) of this section during roof bolting, methane tests may be made by sweeping an area not less than 16 feet inby the last area of permanently supported roof, using a probe or other acceptable means. This method of testing is conditioned on meeting the following requirements:

(i) The roof bolting machine must be equipped with an integral automated temporary roof support (ATRS) system that meets the requirements of 30 CFR 75.209.

(ii) The roof bolting machine must have a permanently mounted, MSHA-approved methane monitor which meets the maintenance and calibration requirements of 30 CFR 75.342(a)(4), the warning signal requirements of 30 CFR 75.342(b), and the automatic de-energization requirements of 30 CFR 75.342(c).

(iii) The methane monitor sensor must be mounted near the inby end and within 18 inches of the longitudinal center of the ATRS support, and positioned at least 12 inches from the roof when the ATRS is fully deployed.

(iv) Manual methane tests must be made at intervals not exceeding 20 minutes. The test may be made either from under permanent roof support or from the roof bolter's work position protected by the deployed ATRS.

(v) Once a methane test is made at the face, all subsequent methane tests in the same area of unsupported roof must also be made at the face, from under permanent roof support, using extendable probes or other acceptable means at intervals not exceeding 20 minutes.

(vi) The district manager may require that the ventilation plan include the minimum air quantity and the position and placement of ventilation controls to be maintained during roof bolting.

* * * * *

Dated: June 27, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–16866 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[IL–099–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Illinois Department of Natural Resources, Office of Mines and Minerals (Department or Illinois) revised its regulations pertaining to definitions, areas designated by Act of Congress, criteria for designating areas as unsuitable for surface coal mining operations, requirements for permits and permit processing, coal exploration, and performance bond release. Illinois also corrected or removed outdated references in several regulations. Illinois revised its program to be consistent with the corresponding Federal regulations and to clarify ambiguities.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: *IFOMAIL@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Illinois Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Illinois program on June 1, 1982. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the June 1, 1982, **Federal Register** (47 FR 23858). You can also find later actions concerning the Illinois program and program amendments at 30 CFR 913.10, 913.15, and 913.17.

II. Submission of the Amendment

By letter dated April 8, 2002 (Administrative Record No. IL–5077), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Illinois sent the amendment in response to a letter dated August 23, 2000 (Administrative Record No. IL–5060), that we sent to Illinois in accordance with 30 CFR 732.17(c), concerning valid existing rights. Illinois also included some changes at its own initiative. Illinois amended its surface coal mining and reclamation regulations at Title 62 of the Illinois Administrative Code (IAC).

We announced receipt of the proposed amendment in the May 17, 2002, **Federal Register** (67 FR 35072). In the same document, we opened the public comment period and provided an opportunity for a public hearing or

meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on June 17, 2002. We did not receive any public comments.

During our review of the amendment, we identified editorial-type errors. We notified Illinois of these errors by letters dated May 30, 2002, and March 31, 2003 (Administrative Record Nos. IL–5078 and IL–5082, respectively).

By letter dated March 14, 2003 (Administrative Record No. IL–5081), Illinois sent us revisions to its proposed program amendment. Also by letter dated April 25, 2003 (Administrative Record No. IL–5083), Illinois sent additional information. Because the revisions were editorial in nature and the additional information merely clarified certain provisions of Illinois' amendment, we did not reopen the public comment period.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Minor Revisions to Illinois' Regulations

1. Illinois deleted its definition of ''Interagency Committee'' at 62 IAC 1701.Appendix A. Illinois removed this definition because Illinois Public Act 90–0490 abolished the Illinois Interagency Committee on Surface Mining Control and Reclamation (Interagency Committee) through an amendment to 225 Illinois Compiled Statutes (ILCS) 720/1.05 in 1997.

On November 21, 2001, we approved the amendment to 225 ILCS 720/1.05 (66 FR 58371). Therefore, we find that the removal of the definition will not make Illinois' regulations less effective than the Federal regulations.

2. In the general definition section at 62 IAC 1701.Appendix A, Illinois removed the existing language from its definition of ''valid existing rights'' and replaced it with a reference to the new definition of ''valid existing rights'' found at 62 IAC 1761.5. Illinois' regulations at 62 IAC Part 1761 concern areas designated by Act of Congress.

We find that relocating the definition of ''valid existing rights'' to the section concerning areas designated by Act of Congress is consistent with the Federal regulations at 30 CFR Part 761. We also find that providing a reference in the general definition section to the new definition of ''valid existing rights'' will clarify the location of the new definition for persons using the Illinois regulations.

3. Illinois proposed to redesignate existing 62 IAC 1762.14, concerning exploration on land designated as unsuitable for surface coal mining operations, as new 62 IAC 1762.15. However, during the adoption of redesignated 62 IAC 1762.15, two editorial errors were made. We notified Illinois of these errors on March 31, 2003 (Administrative Record No. IL–5082). By letter dated April 25, 2003 (Administrative Record No. IL–5083), Illinois indicated that the editorial errors would be corrected in the next State rulemaking.

We find that the redesignation of 62 IAC 1762.14 as 62 IAC 1762.15 is consistent with a recent change made to the counterpart Federal regulation. OSM redesignated its regulation concerning exploration on land designated as unsuitable for surface coal mining operations as 30 CFR 762.15. See 64 FR 70766, dated December 17, 1999. For this reason and because the editorial errors will not affect Illinois' implementation of its regulations concerning exploration on land designated as unsuitable for surface coal mining operations, we are approving 62 IAC 1762.15.

4. Illinois corrected citation references, made minor wording changes, and simplified its use of numbers in 62 IAC 1772.12, Permit Requirements for Exploration Removing More than 250 Tons of Coal; 1773.13(a)(1)(E) and (d), Public Participation in Permit Processing; 1773.15(c)(3)(B), (c)(11), and (c)(13), Review of Permit Applications; 1778.15(e), Right of Entry Information; 1778.16(c), Relationship to Areas Designated Unsuitable for Mining; 1780.31(a)(2), Protection of Public Parks and Historic Places; 1780.33, Relocation or Use of Public Roads; 1784.17(a)(2), Protection of Public Parks and Historic Places (Underground Mining); 1784.18, Relocation or Use of Public Roads (Underground Mining); 1816.116(a)(2)(C), Success of Revegetation; and 1847.9(a), Bond Release Public Hearings.

Because these changes are minor, we find that they will not make Illinois' regulations less effective than the corresponding Federal regulations.

B. Revisions to Illinois' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Illinois' regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

Topic	State regulation	Federal counterpart regulation
Definition of Valid Existing Rights	62 IAC 1761.5	30 CFR 761.5.
Exceptions to Existing Operations	62 IAC 1761.12	30 CFR 761.12.
Procedures for Relocation or Closing of a Public Road or Waiving the Prohibition on Mining Operations within the Buffer Zone of a Public Road.	62 IAC 1761.14	30 CFR 761.14.
Procedures for Waiving the Prohibition on Surface Coal Mining Operations within the Buffer Zone of an Occupied Dwelling.	62 IAC 1761.15	30 CFR 761.15.
Submission and Processing of Requests for Valid Existing Rights Determinations.	62 IAC 1761.16	30 CFR 761.16.
Department Obligations at Time of Permit Application Review	62 IAC 1761.17	30 CFR 761.17.
Applicability to Lands Designated as Unsuitable by Congress	62 IAC 1762.14	30 CFR 762.14.
Permit Requirements for Exploration Removing More Than 250 Tons of Coal.	62 IAC 1772.12(b)(14), (d)(2)(D)	30 CFR 772.12(b)(14), (d)(2)(iv).

During the adoption of its new regulations at 62 IAC 1761.16 and 1772.12(b)(14) shown above, Illinois made three editorial errors. We notified Illinois of these errors on March 31, 2003 (Administrative Record No. IL–5082). By letter dated April 25, 2003 (Administrative Record No. IL–5083), Illinois indicated that the editorial errors would be corrected in the next State rulemaking. Because the editorial errors made to 62 IAC 1761.16 and

1772.12(b)(14) do not affect the meaning of these regulations, we included the regulations in the table above.

Because the State regulations listed in the table have the same meaning as the counterpart Federal regulations, we find that they are no less effective than the Federal regulations.

C. 62 IAC 1761.11 Areas Where Mining is Prohibited or Limited

Illinois deleted existing subsection (b), which prohibited surface coal mining on specified Federal lands unless called for by Acts of Congress. Illinois also redesignated subsections (a)(1) through (a)(7) as subsections (a) through (g), corrected citation references, and simplified its use of numbers.

We are approving Illinois' deletion of 62 IAC 1761.11(b) because it is consistent with OSM's deletion of the counterpart Federal regulation at 30 CFR 761.11(h). *See* 64 FR 70766, dated December 17, 1999. We are also approving the other changes made to 62 IAC 1761.11 because they are minor and will not make Illinois' regulations less effective than the corresponding Federal regulations.

D. 62 IAC 1800.40 Requirement to Release Performance Bonds

Illinois revised 62 IAC 1800.40(b)(2) to allow the Department, when no public hearing is held, to make its final administrative decision regarding a bond release application either 60 days after the application is filed or 5 days after the close of the comment period, whichever is later.

The counterpart Federal regulation at 30 CFR 800.40(b)(2) requires the regulatory authority to make its final decision within 60 days from the filing of the bond release application if no public hearing is held. The Federal regulation at 30 CFR 800.40(a)(2) and the State regulation at 62 IAC 1800.40(a)(2) require that the notice announcing the bond release be placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. When Illinois submitted this amendment on April 8, 2002, it explained that because its public comment period extends to 30 days after the last publication of the notice announcing the bond release, it is possible for the public comment period to expire after the 60-day time limit required by 30 CFR 800.40(b)(2). We recognize that in many small communities in Illinois, the newspapers of general circulation in the locality of the surface coal mining operations may publish only one or two days a week. If the bond release applicant does not get the newspaper advertisement placed in a timely manner, it is possible that the 60-day time limit required by 30 CFR 800.40(b)(2) would expire before the public comment period ends. We find that Illinois' proposed rule would allow a bond release decision to be issued in a timely manner while ensuring consideration of all public comments before a final bond release decision is made. Illinois' proposed rule therefore adheres to the spirit of the Federal requirements at 30 CFR 800.40 in ensuring that the State makes a final decision on the bond release application in a timely manner. Based on the above discussion, we are approving Illinois' revisions at 62 IAC 1800.40(b)(2).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On April 12, 2002, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois program (Administrative Record No. IL–5079). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On April 17, 2002, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. IL–5079). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 12, 2002, we requested comments on Illinois' amendment (Administrative Record No. IL–5079), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment as submitted by Illinois on April 8, 2002, and as revised on March 14, 2003.

We approve the regulations proposed by Illinois with the provision that they be fully promulgated in identical form to the regulations submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 913, which codify decisions concerning the Illinois program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, these provisions have the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR

730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Illinois program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Illinois program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 2003.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

■ 1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 913.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
April 8, 2002	July 7, 2003	62 IAC 1701.Appendix A; 1761.5; 1761.11; 1761.12; 1761.14; 1761.15; 1761.16; 1761.17; 1762.14; 1762.15; 1772.12; 1773.13(a)(1)(E), (d); 1773.15(c)(3)(B), (c)(11), (c)(13); 1778.15(e); 1778.16(c); 1780.31(a)(2); 1780.33; 1784.17(a)(2); 1784.18; 1800.40(b)(2); 1816.116(a)(2)(C); 1847.9(a).

[FR Doc. 03–17081 Filed 7–3–03; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS ND–46–FOR, Amendment No. XXXII]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a proposed amendment to the North Dakota regulatory program (the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposed revisions to its revegetation policy document, ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.'' On its own initiative, it intended to revise its program to improve operational efficiency, clarify ambiguities, and revise its revegetation policy document to reflect the corresponding changes made to its rules, the North Dakota Administrative Code (NDAC).

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550, Internet address: *GPadgett@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act***; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.12, 934.13, 934.15, and 934.30.

II. Submission of the Proposed Amendment

By letter dated November 21, 2002, North Dakota sent us an amendment to its program (Amendment number XXXII, Administrative Record No. ND–GG–01) under SMCRA (30 U.S.C. 1201 *et seq.*). It sent the amendment on its own initiative. The amendment revises North Dakota's revegetation policy document. Many of the changes are made to incorporate rule changes that were approved by OSM and appeared in the March 2, 2001, **Federal Register** as part of State Program Amendment XXX (SPATS number ND–041–FOR) and other staff initiatives.

We announced receipt of the proposed amendment in the February 11, 2003, **Federal Register** (68 FR 6842). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. ND–GG–05). No one requested a public hearing or meeting so we did not conduct one. We did not receive any comments from the public.

OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17.

A. Minor Revisions to North Dakota's Revegetation Document

Throughout the revegetation success guidance document, North Dakota has made editorial and clarification changes. Examples of editorial changes include changing ''Soil Conservation Service or SCS'' to ''Natural Resources Conservation Service or NRCS'', ''which'' to ''that'', ''units'' to ''site'', ensuring noun verb agreement, updating references, standardizing abbreviations and mathematical symbols, and revising example calculations to reflect the latest information. The editorial changes are no less effective than the Federal regulations.

Examples of changes made to clarify the existing document include adding text in: (1) Section II–B to identify using annual county yield reported by North Dakota Agricultural Statistic Service; (2) section II–C, to explain how to use the series modifiers in identifying appropriate productivity indices for each of the soil series listed in Table 1; and (3) section III–D to identify how to apply the various sampling methodologies for cover, production and density. None of these changes substantively revises the approved ''Standards for Evaluation of Revegetation Success And Recommended Procedures for Pre-And Postmining Vegetation Assessments''.

Because these changes are minor, we find that they will not make North Dakota's revegetation policies less effective than the corresponding Federal regulations.

B. Revisions to North Dakota's Revegetation Policy Document for Consistency With the Previously-Approved North Dakota Regulatory Program

North Dakota proposed revisions to its revegetation policy document to make it consistent with the previously-approved North Dakota regulatory program. Throughout the ''Standards For Evaluation Of Revegetation Success And Recommended Procedures For Pre- And Postmining Vegetation Assessments'', North Dakota has revised language to

bring this document into compliance with regulatory language previously approved by OSM in the March 2, 2001, **Federal Register** (66 FR 13015). The section of the regulations that was approved, NDAC 69–05.2–22–07(4)(l), deals with evaluating revegetation success on prime farmlands and timeframes for demonstrating revegetation success.

Language throughout the document was, in general, revised to specify the last two ''consecutive'' growing seasons; to delete, ''in the case of non-prime farmlands;'' and ''out of five consecutive years; to change eighth year to sixth year; and add ''with one year being the last year'' to read as follows:

> in each of the last two consecutive growing seasons or any three years starting no sooner than the sixth year and with one year being the last year of the responsibility period.

This revision reflects the previously-approved change to NDAC 69–05.2–22–07(4)(l) and is no less effective.

In the cropland portion of the success standards document, language was added that specifies that a separate success standard must be calculated for prime farmland tracts unless a single yield standard has been approved as allowed by NDAC 69–05.2–22–07(4)(1), as follows:

> A separate success standard must be calculated for prime farmland tracts unless a single yield standard has been approved as allowed by NDAC 69–05.2–22–07(4)(l).'' and ''For reclaimed prime farmland, a separate yield standard must be calculated for that tract and three years (not necessarily consecutive) of data must be submitted that demonstrates that the productivity is equal to or greater than the approved standard with 90% statistical confidence. Alternatively, if a single standard has been approved and calculated for a reclaimed tract containing a mixture of prime and non-prime farmlands as allowed by NDAC 69–05.2–22–07(4)(l), data must be submitted which demonstrates that productivity is equal to or greater than the approved standard (with 90% statistical confidence) in any three years starting no sooner than the sixth year and with one year being the last year of the responsibility period.

This revision also reflects the approved change to NDAC 69–05.2–22–07.4.1 and is no less effective.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

C. Revisions to North Dakota's Revegetation Policy Document With No Corresponding Federal Regulations

1. Section II–C, Cropland

North Dakota has made several changes to this section of its guidelines. These include (1) revising the equations to estimate summer fallow or continuous cropping yields to include equations for Durum wheat as well as spring wheat and to include equations for Adams County and delete Ward County; (2) inclusion of an exemption from the requirement that control areas be established two years prior to demonstrating revegetation success may be granted if documentation is submitted to the Reclamation Division that demonstrates that the management of the control area for the previous two years has been equivalent in effect to that of the reclaimed area; (3) adding a note that allows them to develop climatic correction factors when there is no yield data for a productivity index equal to 100 available for the crop being grown on both the reclaimed and control areas; and (4) revising Cropland Table 1, Spring wheat productivity indexes based on the NRCS' Soils Interpretive Guide published in January 2000.

Because the changes to this section could affect prime farmland, the NRCS has reviewed this proposed revision, as well as all the proposed changes to this document, and determined that the proposed changes are acceptable. The NRCS develops the productivity indices used by the State and is the expert in this area. The NRCS has submitted a letter of concurrence with the proposed changes to this document. Based on this letter and review of the Federal regulations at 30 CFR 816.116 and 823.15, we have determined that the proposed changes are consistent with and no less effective than the Federal regulations.

2. Section II–D, Native Grassland

North Dakota proposes to revise the diversity and seasonality standards for native grasslands. In support of the proposed change, North Dakota states that the changes in the native grassland section simplify the diversity and seasonality standards. The revegetation document previously required that reclaimed native grassland have seasonality and diversity values meeting or exceeding standards derived from either range site reference areas or NRCS range site description data. The modified standards require that at least five native grass species be present on reclaimed native grasslands, but only four native grass species will have to be present in specified percentages. Of these four species, there must be at least two warm season species and one cool season species. The total relative composition of warm season species must be at least 15% and the native species must be at least 65% of the total species composition. The primary reasons for the revisions to the diversity and seasonality standards are (1) it simplifies the previous methodology that was overly complicated and involved and (2) with the mixing of topsoil materials during the mining and reclamation process, the overwhelming majority of the reclaimed native grassland tracts will be most similar to the ''silty'' range site.

The Federal regulations at 30 CFR 816.111(a)(1) require, in part, that the permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is diverse. Further, 30 CFR 816.111(b)(2) requires that the reestablished plant species shall have the same seasonal characteristics of growth as the original vegetation. OSM has determined that the proposed diversity and seasonality standards comply with the intent of 30 CFR 816.111 and are no less effective than the Federal regulations.

3. Section II–E, Tame Pastureland

North Dakota has revised its pastureland diversity standard to eliminate the numerical requirement. The revised standard focuses on the presence of the seeded pasture species and the appropriateness of any invading species. The Federal regulations at 30 CFR 816.111(a)(1) require, in part, that ''the permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is diverse, effective, and permanent.'' No numerical standards are specified. OSM has determined that the revised diversity standard for pastureland meets the intent of the requirements of 30 CFR 816.111(a)(1) and is therefore no less effective.

4. Section II–F, Woodland Success Standards

North Dakota proposes several revisions to this section. The majority of the changes to this section are editorial in nature and provide clarification without affecting the currently approved

stocking standards. The only significant change is to the tree and shrub diversity and seasonal variety standards. North Dakota proposes to require that at least 60% of the planted tree species should be present at 50% of the initial planting rate and at least 60% of the shrub species should each comprise at least 10% of the density standard. This means an increase in the percentage of tree species that must be present by 10% and creates a minimum number of stems that must be present for each of these tree and shrub species. To support this change, North Dakota states that the standards for diversity and seasonal variety on reclaimed woodlands have been updated by revising the percentages of species that need to be present in certain quantities in order to meet the requirements for final bond release. The revised percentages were based on data from undisturbed and reclaimed woodlands at the Glenharold Mine. These changes are no less effective than the Federal regulations at 30 CFR 816.111(a)(1) concerning establishment of vegetation that is diverse, effective and permanent.

North Dakota has also added a statement that tree and shrub stems occurring as a result of natural regeneration may be counted. This new statement is consistent with the State rules at NDAC 69–05.2–22–07(4)(f) and provides additional clarification. The proposed change is also consistent with section 515(b)(19) of SMCRA, which requires the operator to establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan. SMCRA specifically refers to vegetative cover capable of self-regeneration. North Dakota's allowance to include stems of trees and shrubs that are the result of regeneration in meeting vegetation success clearly complies with the intent of SMCRA and is no less effective than the Federal regulations.

5. Section II–G, Shelterbelts

North Dakota proposes to add the following language to the section on Shelterbelts: ''The Commission will consider modifying the shelterbelt profile density standard if it is demonstrated that a natural disaster (*e.g.*, disease epidemic, prolonged drought, *etc.*) has affected the planting. Any replanting due to a natural disaster will be considered a normal husbandry practice which will not restart the liability period.''

The regulations at 30 CFR 816.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and be included in an approved regulatory program.

In support of the proposed new language, North Dakota has stated that without knowing the exact nature of the natural disaster and the effect that it may have upon the profile density standard, it is impossible to develop modified success standards. For example, if a disease has eliminated a certain species, it may be possible to either replant a resistant variety of the same species or to require the replanting of an entirely new species. However, if only part of the planting is lost, then it must be determined for each case what effect has occurred and the possible remedies. It is not possible to spell out in detail all possible scenarios under which some sort of adjustment may be necessary. The State also added language stating that any replanting due to a natural disaster will be considered a normal husbandry practice that will not restart the revegetation liability period.

As written, North Dakota's proposal would allow it to modify the shelterbelt success standards if a natural disaster has affected the planting. The Federal regulations require that success standards be included in the approved program. However, OSM concurs with North Dakota's assessment that it is not possible to anticipate all possible scenarios that could result in a change to the shelterbelt standard. Because of the limited acreage of shelterbelts and the goal of encouraging their establishment some flexibility is necessary. OSM also notes that North Dakota only proposes to allow a change in the profile density success standard, not the requirements for vigor, competition, erosion control, or species diversity, seasonal variety and regenerative capacity.

North Dakota also proposes to allow the replanting within shelterbelts affected by natural disasters as a normal husbandry practice. Review of the NRCS Conservation Practice Standards for Windbreak/Shelterbelt Establishment (Code 380) and Windbreak/Shelterbelt Renovation (Code 650) clearly indicates that replacement of dead trees and shrubs, regardless of how they died, should be continued until the barrier's function is restored. As such the State's proposal to allow replanting without restarting the liability period is clearly a normal husbandry practice under 30 CFR 816.116(c)(4).

OSM has determined that the proposed language is consistent with and no less effective than the requirements of 30 CFR 816.116.

6. Section II–H, Fish and Wildlife Habitat

North Dakota has revised this section to provide more flexibility in evaluating the effectiveness of the reestablished grassland for providing wildlife habitat. The actual cover standard is unaffected. The specific height requirement is eliminated in favor of a qualitative evaluation. This evaluation demonstrates compliance with the Federal requirement to establish an effective plant community.

North Dakota has also revised the diversity standard for grasslands that are used for Fish and Wildlife habitat. The revised standard requires that at least 60% of the total species composition be comprised of the seeded species. This evaluation demonstrates compliance with and is consistent with the Federal requirement to establish a diverse plant community.

Finally, North Dakota has revised its guidance on regenerative capacity to be a subjective evaluation rather than a quantitative evaluation. The Federal regulations require establishment of a plant community capable of self-regeneration. However, no quantitative evaluation is required. North Dakota's proposed changes are consistent with and no less effective than the Federal regulations requiring establishment of a plant community capable of regeneration.

The proposed changes to this section are consistent with and no less effective than the Federal regulations at 30 CFR 816.111 and 816.116(b)(3).

North Dakota has revised a portion of the Annual Crops Fish and Wildlife Habitat section to provide some additional flexibility. The changes eliminate the requirement that the cover from annual crop be approximately 10 inches in height. North Dakota proposes instead to focus on the presence of an adequate food source and adequate cover for the postmining land use. This ensures that the vegetative ground cover is adequate to achieve the postmining land use. The rule continues to require that erosion be adequately controlled to prevent contribution of suspended solids to runoff. North Dakota's proposed changes are consistent with and no less effective than the requirements of 30 CFR 816.111 and 816.116(b)(3)(iii), which require that vegetative ground cover shall not be less

than that required to achieve the approved postmining land use.

7. Section III–C, Sampling Design

North Dakota proposes revising the sampling design section. Several minor editorial changes have been made. However, the major revisions involve changes to the method for determining adequate sample sizes for two populations and the addition of a method for determining adequate sample sizes for stratified sampling. The change to the two-sample sample adequacy equation involves simplifying the calculation of the variance and mean used in the currently approved formula by simply using the data from the area, either reclaimed or reference, that has the highest variance and removing the complexity in allocating the number of samples required between the reclaimed area and the reference area.

The State has also added a method for calculating sample adequacy for stratified sampling. The proposed formula allocates the minimum sample size for each stratum based on the total number of samples necessary to adequately sample the entire area, the area of each stratum, and the variance associated with the stratum.

The regulations at 30 CFR 816.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error).

OSM has reviewed the proposed changes and additions and determined that these proposed methods are recognized approaches for determining adequate sample sizes. Use of either of these formulas, as appropriate, ensures that the sampling techniques for measuring revegetation success use a 90-percent statistical confidence interval. The proposed revisions are consistent with and no less effective than the Federal regulations.

8. Section III–D, Methods for Measuring Productivity, Cover, and Density

North Dakota has made numerous revisions throughout this section. In general, many of these proposed revisions are for clarification and do not substantively revise this section. One significant change is that North Dakota proposes to allow the use of combines equipped with the global positioning system yield monitoring systems. The document provides specific guidance on how these systems can be used. This includes requiring calibration of the yield monitor and submission of that information along with test weight, moisture content, and dockage of the crop. If the yield monitor calibration does not correct yield values for test weight and moisture content, these corrections must also be made when reporting yield data used to show reclamation success. OSM has reviewed this proposed method and determined that it is a statistically valid sampling technique. The State has also established minimum sample sizes for evaluating hay production using both whole field and partial field harvest. This is consistent with the Federal regulations.

OSM has determined that the proposed changes to the measurements section of the document are consistent with and no less effective than 30 CFR 816.116(a)(1) and (2).

9. Section III–E, Statistical Analysis

The ''Statistical Analyses'' section has been rewritten to standardize the symbols used in the equations. Also, examples have been added on how to use the equations. OSM has reviewed the proposed section, which also replaces existing Appendix C, Statistical Formulae and t Distribution, and determined that all the proposed statistical equations are widely used, correctly and appropriately.

The regulations at 30 CFR 816.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. The regulations at 30 CFR 816.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (*i.e.*, one-sided test with a 0.10 alpha error). OSM has determined that the proposed changes to this section are consistent with and no less effective than the Federal regulations at 30 CFR 816.116(a)(1) and (2).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in the February 11, 2003, **Federal Register** (68, FR 6842* * *Administrative Record No. ND–GG–05), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND-GG–03). No comments were received.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that North Dakota proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 9, 2002, we requested comments on North Dakota's amendment (Administrative Record No. ND–GG–03). The SHPO responded on December 16, 2002, that he had no comments (Administrative Record No. ND–GG–04). The ACHP did not respond.

V. OSM's Decision

Based on the above findings, we approve North Dakota's November 21, 2002, amendment, as discussed in: finding A, Minor Revisions to North Dakota's Revegetation Document; finding B, Revisions to North Dakota's Policy Document for Consistency with the Previously-Approved North Dakota Regulatory Program; finding C.1, Section II–C concerning cropland; finding C.2, Section II–D, concerning native grassland; finding C.3, Section II–E concerning tame pastureland; finding C.4, Section II–F concerning woodland success standards; finding C.5, Section II–G concerning shelterbelts; finding

C.6, Section II–H concerning fish and wildlife habitat; finding C.7, Section III–C concerning sampling design; finding C.8, Section III–D concerning methods for measuring productivity, cover, and density; and finding C.9, Section III–E concerning statistical analysis.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 934, which codify decisions concerning the North Dakota program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17 requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the North Dakota program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require North Dakota to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 that requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 27, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by date of final publication to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* *	* * *
November 21, 2002	July 7, 2003	*Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments: Section II–C, D, E, F, G, and H; Section III–C, D, and E*

[FR Doc. 03–17079 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–128–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with certain exceptions, a proposed amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposed to revise its program regarding rules related to the criteria and procedures for designating areas as unsuitable for surface mining. Pennsylvania modified these rules to be consistent with the corresponding Federal regulations and SMCRA and because under its Regulatory Basics Initiative, Pennsylvania considered its former regulations to be unclear, unnecessary or more stringent than the corresponding Federal regulations.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, telephone: (717) 782–4036, e-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

By letter dated November 22, 1999, Pennsylvania sent us an amendment to its program (Administrative Record No. PA 861.03) under SMCRA (30 U.S.C. 1201 *et seq.*). Pennsylvania sent the amendment to include changes made at its own initiative. The provisions of Title 25 of the Pennsylvania Code (Pa. Code) that Pennsylvania proposed to revise were: 86.1 Definitions; 86.101 Definition of terms; 86.102 Areas where mining is prohibited or limited; 86.103 Procedures; 86.121 Areas designated unsuitable for mining; 86.123 Procedures: petitions; 86.124 Initial processing, record keeping and notification requirements; 86.125 Hearing requirements; 86.126 Decision; 86.127 Data base inventory system requirements; 86.128 Public information; 86.129 Coal exploration; and 86.130 Areas unsuitable for mining.

We announced receipt of the proposed amendment in the December 27, 1999, **Federal Register** (64 FR 72297). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on January 26, 2000. We received comments from three Federal agencies and one State agency. The Federal agencies were the U.S. Department of Labor (Mine Safety and Health Administration), New Stanton and Wilkes-Barre offices and the U.S. Environmental Protection Agency

(EPA), Region III. The State agency was the Pennsylvania Historical and Museum Commission.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment with the exception as noted below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Minor Revisions to Pennsylvania's Rules

Pennsylvania proposed minor changes to the following previously approved rules.

Pennsylvania is adding the metric measurement equivalent to the standard measurements found at sections 86.101(8), (8)(ii), (10), (11), and (12); 86.103(c) and throughout various subsections of 86.130(b). We find that adding the metric equivalent will not render these regulations inconsistent with the Federal regulations.

Pennsylvania is deleting the references to the Bureau of Mining and Reclamation at sections 86.123(c) and 86.124(d) and replacing that phrase with the word ''Department'' which is a reference to the Pennsylvania Department of Environmental Protection (PADEP). These changes are not inconsistent with the Federal rules because it clarifies the role of PADEP, which is the State regulatory authority that implements the coal mining program in Pennsylvania. We are approving these changes.

B. Revisions to Pennsylvania's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Pennsylvania proposed revisions to the following rules containing language that is the same or similar to the corresponding sections of the Federal regulations.

Pennsylvania rule citation	Corresponding Federal regulation	Topic
25 Pa. Code 86.1 Definitions ''valid existing rights''.	30 CFR 761.5	Definition used as part of the criteria and procedures for designating areas unsuitable for surface mining.
25 Pa. Code 86.101 Definitions ''fragile lands''	30 CFR 762.5	Definition used as part of the criteria and procedures for designating areas unsuitable for surface mining.
25 Pa. Code 86.101 Definitions ''historic lands''	30 CFR 762.5	Definition used as part of the criteria and procedures for designating areas unsuitable for surface mining.
25 Pa. Code 86.101 Definitions ''public building''.	30 CFR 761.5	Definition used as part of the criteria and procedures for designating areas unsuitable for surface mining.
25 Pa. Code 86.101 Definitions ''public park''	30 CFR 761.5	Definition used as part of the criteria and procedures for designating areas unsuitable for surface mining.
25 Pa. Code 86.101 Definitions ''renewable resource lands''.	30 CFR 762.5	Definition used as part of the criteria and procedures for designating areas unsuitable for surface mining.
25 Pa. Code 86.101 Definitions ''significant recreational value, timber, economic or other values incompatible with surface mining operations''.	30 CFR 761.5	Definition used as part of the criteria and procedures for designating areas unsuitable for surface mining.
25 Pa. Code 86.102(1)	30 CFR 761.11(a)(1)–(6)	Areas where surface coal mining operations are prohibited or limited.
25 Pa. Code 86.102(3)	30 CFR 761.11(c)	Areas where surface coal mining operations are prohibited or limited.
25 Pa. Code 86.102(9) through (9)(iii)	30 CFR 761.11(e) and 761.15(b), surface coal	Areas where (c) and (d) mining operations are prohibited or limited.
25 Pa. Code 86.103(d)	30 CFR 761.15(b)	Procedures
25 Pa. Code 86.103(e), (e)(2)(i) and (ii)	30 CFR 761.17(d)(1) through (d)(1)(iii)	Regulatory authority obligations at the time of permit application review.
25 Pa. Code 86.121(1) through (3)	30 CFR 762.13 (a) through (c)	Areas exempt from designation as unsuitable for surface mining operations.
25 Pa. Code 86.123(c)(5)	30 CFR 764.13(a)	Right to petition
25 Pa. Code 86.124(c)	30 CFR 764.15(c)	Initial processing, record keeping, and notification requirements.
25 Pa. Code 86.125(c)	30 CFR 764.17(a)	Burden of Persuasion.
25 Pa. Code 86.127(b)	30 CFR 764.21(b)	Database and inventory system requirements.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

Pennsylvania is also modifying the following definitions found at 25 Pa. Code 86.101 by deleting some existing language and adding language: fragile lands, historic lands, public building, public park and renewable resource lands and deleting existing 86.121(a) and (b). Since the added language to these definitions or the new sections to 86.121(1) through (3) are substantively identical to the Federal rules, we find that the deletions do not render the Pennsylvania program inconsistent with SMCRA or the Federal regulations.

25 Pa. Code 86.1 Definition of Valid Existing Rights. Pennsylvania is deleting its existing definition of ''Valid Existing Rights'' which stated:

Valid Existing Rights—Includes the following:

(i) Except for haul roads and activities enumerated in subparagraph (iii), property rights in existence on August 3, 1977, that were created by a legally binding

conveyance, lease, deed, contract or other document which authorizes the applicant to produce minerals by a surface mining operation. The person proposing to conduct surface mining operations on the lands shall hold current State and Federal permits necessary to conduct the operations on those lands and either have held those permits on August 3, 1977, or had made by that date a complete application for the permits, variances and approvals required by the Department.

(ii) For haul roads, the term includes:

(a) A recorded right-of-way, recorded easement, or a permit for a haul road recorded as of August 3, 1977.

(b) Another road in existence as of August 3, 1977.

(iii) Coal preparation activities, and their associated haul roads, which were not subject to this chapter and Chapters 87–90 prior to August 25, 1989, were in existence on or before July 6, 1984, and were operating in compliance with applicable laws prior to that date.

(iv) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right and that the document has been signed by the surface owner.

(v) The term does not include the mere expectation of a right to conduct surface mining operations or the right to conduct underground coal mining.

Pennsylvania is proposing the following language as its new definition: ''Rights which exist under the definition of ''valid existing rights'' in 30 CFR Section 761.5 (relating to areas unsuitable for mining).'' Pennsylvania stated in the Pennsylvania Bulletin (Pa. Bull.) that this ''change will conform the Commonwealth's regulations to the [Pennsylvania] statutes [52 P.S. 1396.4e, 52 P.S. 30.56a, and 35 P.S. 691.315] and will make it unnecessary for the Commonwealth to change its definition if the Federal definition is changed.'' 29 Pa. Bull. 5289, 5292 (October 9, 1999). Accordingly, we find that since Pennsylvania is effectively incorporating OSM's definition of valid existing rights and will change its implementation of its definition if the Federal definition should change, the Pennsylvania definition is no less effective than the Federal regulation at 30 CFR 761.5.

25 Pa. Code 86.124(a)(2). Pennsylvania amended this section by adding the sentence, ''A frivolous petition is one in which the allegations of harm lack serious merit.'' This language is identical to the language describing a frivolous petition in the Federal regulations at 30 CFR 764.15(a)(3). Because the language is the same as in the Federal regulations, we find it no less effective and we are approving it.

25 Pa. Code 86.129. This section provides the requirements for conducting coal exploration on areas designated as unsuitable for surface mining operations. The section will allow coal exploration on areas designated as unsuitable for surface mining operations if the following provisions of subsections (b)(1) and (2) are met:

* * * * *

(b) Coal exploration may be conducted on an area designated as unsuitable for surface mining operations in accordance with this chapter if the following apply:

(1) The exploration is consistent with the designation.

(2) The exploration will be conducted to preserve and protect the applicable values and uses of the area under Subchapter E (relating to coal exploration) and the Department has issued written approval for the exploration.

* * * * *

In amending this section, Pennsylvania dropped a requirement in subsection (b)(2) that it would not grant approval for coal exploration unless the person seeking the approval has described the nature and extent of the proposed operation, and has described in detail the measures to be employed to prevent adverse effects. Even though Pennsylvania dropped this requirement, 25 Pa. Code 86.129 remains no less effective than the corresponding Federal regulation at 30 CFR 762.15 because of its reference to 25 Pa. Code Subchapter E. Under Subchapter E, 25 Pa. Code 86.133(f) provides that:

* * * * *

(f) Coal exploration on lands where a petition to declare an area unsuitable for mining has been received by the Department or on lands designated unsuitable for mining shall by conducted only after written approval is granted by the Department. The Department may prescribe conditions and requirements necessary to preserve the values sought to be protected in the petition before approving coal exploration in these areas. The exploration activities shall be conducted in accordance with § 86.129 (relating to coal exploration) to insure that the exploration activity does not interfere with a value for which the area has been designated unsuitable for mining.

* * * * *

Taken together, the provisions of 25 Pa. Code 86.133(f) and 25 Pa. Code 86.129 provide the same level of protection as the Federal regulations at 30 CFR 762.15 regarding coal exploration on lands unsuitable for surface coal mining. The Federal regulations require approval under the State's equivalent to the Federal coal exploration regulations at 30 CFR part 772 to ensure that the exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining. We find it no less effective than the Federal rule and we are approving the change to this section.

C. Revisions to Pennsylvania's Rules That Are Not the Same as the Corresponding Provision of the Federal Regulations

25 *Pa. Code 86.101 Definitions.* The definition of ''surface mining operations'' has been modified by deleting the following phrase at the end of the definition: ''* * *and activities involved in or related to underground coal mining which are conducted on the surface of the land, produce changes in the land surface, or disturbs the surface, air or water resources of the area.'' The definition now reads:

The extraction of coal from the earth or from waste or stock piles or from pits or banks by removing the strata or material which overlies or is above or between them or otherwise exposing and retrieving them from the surface, including, but not limited to, strip and auger mining, dredging, quarrying and leaching and surface activity connected with surface or underground coal mining, including, but not limited to, exploration, site preparation, entry, tunnel, slope, drift, shaft and borehole drilling and construction and activities related thereto, coal refuse disposal, coal processing and preparation facilities.

This definition only applies to subchapter D of 25 Pa. Code Chapter 86 and was revised to eliminate the inconsistency between Pennsylvania's definition and our interpretative rulemaking on activities applicable to section 522(e) of SMCRA. 29 Pa. Bull. 5289, 5290 (October 9, 1999). Our interpretative rule found at 30 CFR 761.200(a) states ''[s]ubsidence due to underground coal mining is not included in the definition of surface coal mining operations under section 701(28) of the Act and 700.5 of this chapter and therefore is not prohibited in areas protected under section 522(e) of the Act.'' In the preamble to the interpretative rule we noted that ''we interpret the definition of ''surface coal mining operations'' at SMCRA section 701(28)(A) and in the analogous portion of the existing rules at 30 CFR 700.5 not to include subsidence, and to include only: (1) Activities on the surface of lands in connection with a surface coal mine; and (2) Activities subject to section 516, conducted on the surface of lands in connection with surface

operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce.'' (64 FR 70838, 70844 (12/17/99)).

Even though Pennsylvania's revised definition of surface mining operations removes the inclusion of activities involved in or related to underground mining it still includes surface activity connected with underground mining. In the Pennsylvania Bulletin, Pennsylvania states ''[i]n the definition of ''surface mining operations,'' the reference to activities related to underground coal mining that affect the land surface has been deleted to clarify that surface mining operations do not include any surface effects of underground mining resulting from activities that were conducted beneath the land surface.'' 29 Pa. Bull. 5292. Pennsylvania maintains that its rulemaking ''is consistent with Federal requirements and that it addresses the difference between the physical characteristics of mining activities conducted on the surface as opposed to underground.'' Id. Accordingly, we are approving the deletion of this language with the understanding that Pennsylvania will implement the definition of ''surface mining operations'' in the same manner as contemplated by 30 CFR 761.200(a) and find the deletion not inconsistent with the Federal regulations.

25 Pa. Code 86.102(11). This section provides that surface mining operations are not permitted within 100 feet of a cemetery unless there is valid existing rights. In addition to this existing restriction, Pennsylvania is adding that cemeteries may be relocated under 9 P.S. 41–52. The Federal counterpart at 30 CFR 761.11(g), also states that mining cannot occur within 100 feet of a cemetery unless there is valid existing rights and unless the cemetery is relocated in accordance with all applicable laws and regulations. Pennsylvania's added language is consistent with the Federal regulation because it allows for the relocation of a cemetery and we are approving the change.

25 Pa. Code 86.124(f) Procedures: Hearing requirements. This section provides that the Department will prepare a recommendation on each complete petition received under this section and submit it to the Environmental Quality Board (EQB) within 12 months of receipt of the complete petition. This section could be viewed as less effective than the Federal regulations at 30 CFR 764.19(b) which require that, ''a final written decision shall be issued by the regulatory authority, including a statement of the reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. However, the enabling legislation for this section of the Pennsylvania regulations is located within Pennsylvania's SMCRA, at 52 P.S. section 1396.4e(f) which states, ''Within ten (10) months after receipt of the petition, the Department shall hold a public hearing * * * within sixty (60) days after such hearing, the Department shall issue and furnish the petitioners and any other party to the hearing, a written decision regarding the petition and the reasons therefore.'' This language has been previously determined to be consistent with, and no less effective than, SMCRA and the Federal regulations. With the Pennsylvania statutory language consistent with Federal law and regulations, we are not approving the revision in regulations to the extent that it could be interpreted as inconsistent with the enabling Pennsylvania statute and less stringent than SMCRA and the implementing regulations. We expect that Pennsylvania will continue to process unsuitability petitions in a manner consistent with State law.

25 Pa. Code 86.125 Procedures: Hearing requirements. Pennsylvania deleted the requirement at subsection (b) for a verbatim transcript of the petition hearing and moved the requirement to subsection (d). These changes are consistent with the Federal rule at 30 CFR 764.17(a) which requires a record of the petition hearing to be made and preserved according to State law.

Pennsylvania revised subsection (e) [renumbered from (b) to (e)] to provide that PADEP will give notice of the hearing by first class mail and also revised subsection (e)(3) to indicate the notice is to be sent to persons known to PADEP to have an ownership or other interest in the area covered by the petition. This is no less effective than the Federal regulations at 30 CFR 764.17(b)(2) which requires notice of the hearing to property owners by first class mail. Pennsylvania deleted the first class mail notification requirement of (e)(4) to the petitioner and intervenors and added subsection (f), which requires that notice of the hearing by certified mail shall be given to the petitioner and intervenors. These changes are no less effective than the Federal rules.

At subsections (g) and (h), Pennsylvania is changing some of the hearing responsibilities from the EQB to PADEP. Pennsylvania is also making editorial changes at subsections (i) and (k). All of these changes do not render the Pennsylvania regulations inconsistent with the Federal regulations and we approving the changes.

Subsection (j) was revised to read as follows:

* * * * *

(j) Within 60 days of the close of the public comment period, the Department will prepare a recommendation to the EQB, including a statement of the reasons for the recommendation and provide written notice of its recommendation to the petitioners and intervenors.

* * * * *

For a full discussion of our finding on the time frames for providing a written notice to petitioners and intervenors, see the discussion under 25 Pa. Code 86.124(f) above. Section 86.125(j) is not approved to the same extent that 25 Pa. Code 86.124(f) is not approved.

25 Pa. Code 86.126 Procedures: Decision. Subsections (b) and (b)(1) were revised and subsection (b)(2) was added. These sections now read:

(b) The EQB will promptly send the decision by certified mail to the petitioner, intervenors and to the Office of Surface Mining Reclamation and Enforcement.

(1) If the decision is to designate an area as unsuitable for surface mining operations, the EQB will deposit and publish its decision as a regulation in the manner required by the Regulatory Review Act (71 P. S. sections 745.1—745.15); the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. sections 1102, 1201—1208 and 1602) known as the Commonwealth Documents Law and 45 Pa.C.S. Part I (relating to publication and effectiveness of Commonwealth documents).

(2) If the decision is not to designate an area as unsuitable for surface mining operations, the EQB will publish its decision in the Pennsylvania Bulletin within 30 days.

In 25 Pa. Code 86.126(b), Pennsylvania deleted the following provision: ''A final written decision in the form of a regulation will be issued by the EQB within 60 days following the public hearing, including a statement of reasons for the decision.'' We are approving this deletion because of the finding we made with regard to issuance of final decisions in 25 Pa. Code 86.124(f) above. As we noted in 25 Pa. Code 86.124(f), we expect that Pennsylvania will continue to process unsuitability petitions in a manner consistent with State law.

The changes to these subsections specify who will be sent the decision, the appropriate documents where EQB's decisions are to be published and under what authority. The Federal rule at 764.19(b) requires that the final written decision shall be sent by certified mail

to the petitioner, intervenors and by regular mail to all other persons involved in the proceeding. OSM was concerned that Pennsylvania's regulation failed to provide notification of the decision by regular mail to all other persons involved in the proceeding. In a letter dated February 13, 2002 (Administrative Record No. PA 861.10), Pennsylvania noted that the Pennsylvania Regulatory Review Act (71 P.S. 745.1 *et seq.* required notification to all interested parties. *See,* 71 P.S. 745.5a. Accordingly, we find that the inclusion of this information does not make Pennsylvania's program inconsistent with the Federal regulations at 30 CFR 764.19(b) and we are approving it.

D. Revisions to Pennsylvania's Rules With No Corresponding Federal Regulations

25 Pa. Code 86.102(4). Subsection (4) was modified by inserting the phrase, ''the Department of Conservation and Natural Resources and'' before the words, ''the Department.'' The section now reads: ''On lands within the State park system. Surface mining activities may be permitted if the Department of Conservation and Natural Resources and the Department find that significant land and water conservation benefits will result when remining of previously mined land is proposed.''

The Department of Conservation and Natural Resources is now included in the decision on whether mining will be prohibited on certain State lands. There is no Federal counterpart to this subsection. We find that this addition does not make this rule inconsistent with the Federal regulations.

25 Pa. Code 86.102(5) was modified by inserting the, '' * * * Department of Conservation and Natural Resources and the * * *'' before the word, ''Department.'' This section now reads:

* * * * *

(5) On lands within State forest picnic areas, State forest natural areas and State forest wild areas. Surface mining operations may be permitted on State forestlands other than picnic areas, natural areas and wild areas, if the Department of Conservation and Natural Resources and the Department find that one or more of the following apply:

(i) There will be no significant adverse impact to natural resources, including timber, water, wildlife, recreational and aesthetic values.

(ii) Significant land and water conservation benefits will result when remining of previously mined lands is proposed.

* * * * *

The Department of Conservation and Natural Resources is now included in the decision on whether mining will be prohibited on certain State lands. There is no Federal counterpart to this subsection. We find that this addition does not make this rule inconsistent with the Federal regulations.

25 Pa. Code 86.130 Areas designated as unsuitable for mining. Pennsylvania corrected two regulatory references in this section by adding the description of that reference.

Section 86.130 is the section where Pennsylvania publishes the results of EQB's decisions designating areas as unsuitable for all or certain types of surface mining operations. There are no comparable provisions in the Federal regulations requiring publication of the designations. Publication will insure that the designations are available for all interested persons to review. As a result, we find that this section is not inconsistent with the Federal regulations and we are approving it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. PA 861.03), but we did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 861.04). The Department of Labor, Mine Safety and Health Administration (MSHA), New Stanton Office, provided comments by letter dated December 17, 1999 (Administrative Record No. PA 861.07). The comments included one substantive comment that requested changing the reference in the Federal regulations to the definition of ''Valid Existing Rights'' (VER) to actually insert the language redefining VER.

We have considered this comment and believe that requiring Pennsylvania to delete the reference to 30 CFR and inserting the language does not have any effect on the proposed revision to the Pennsylvania program. Therefore, we will not request Pennsylvania to change this reference.

By letter dated December 6, 1999, (Administrative Record No. PA 861.05) MSHA's Wilkes-Barre office, stated that nothing conflicted with existing MSHA regulations.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No. PA 861.04). EPA responded on December 15, 1999, that the amendments appeared to comply with the Clean Water Act (Administrative Record No. PA 861.06).

The Pennsylvania Historical and Museum Commission (PHMC)

PHMC submitted comments by letter dated February 26, 1999 (Administrative Record No. PA 861.01) with a follow up letter dated December 7, 1999 (Administrative Record No. PA 861.09) resubmitting their earlier comments. The comments submitted include:

1. The proposed change in the definition of a completed application at 25 Pa. Code 86.1 weakens Pennsylvania's requirements by only requiring an applicant for a permit application to complete forms addressing each requirement of the application instead of ''demonstrating compliance with applicable statutes and regulations.''

We have determined that the comment addresses an issue that is not in this program amendment. Since it is outside the scope of the amendment, we are not required to address this comment.

2. The revision to the definition of valid existing rights in 25 Pa. Code 86.1 deletes nearly all descriptions of what are valid rights for people and agencies and replaces them with a line indicating that valid existing rights are rights which exist under the definition of valid existing rights in 30 CFR 761.5. PHMC wants to retain the old definition, or repeat verbatim, the Federal definition so the rights of the people or agencies are clear.

PHMC is correct in noting the change. However, OSM's standard for review of amendments to State program regulations are whether the regulations are no less effective than the corresponding Federal regulations in meeting the requirements of SMCRA (*see* 30 CFR 730.5). Pennsylvania's inclusion of the reference to the Federal regulations in the definition of valid existing rights makes it no less effective than the Federal regulations because it now includes all rights as protected by Federal regulation.

3. The change to the definition of fragile lands in 25 Pa. Code 86.101 adds the stipulation that the damage to these properties be significant. This is inconsistent with Federal Section 106 statutes, which applies when there is an impact to cultural resources. Also the deletion of language that provides protection to buffer areas surrounding fragile lands is unacceptable.

As with Pennsylvania's change to the definition of valid existing rights, the

change in definition to fragile lands is based on the Federal definition of fragile lands at 30 CFR 762.5. The Federal definition also describes areas that could be significantly damaged by surface coal mining operations. We have found that Pennsylvania's definition of fragile lands is no less effective than the Federal definition. As for the deletion of the buffer zone provisions of Pennsylvania's definition, there is no such similar provision in the Federal regulations. As a result, we cannot require Pennsylvania to retain the buffer zone protections because its deletion will not make Pennsylvania's program less effective than Federal regulations.

4. The revision to the definition of historic lands should include additional examples of what constitutes historic lands to include ''historic or cultural districts and paleontological sites'' at 25 Pa. Code 86.101.

We have considered this comment and find that the definition is substantively identical to, and no less effective than, the Federal definition of ''historic lands'' found at 30 CFR 762.5.

5. The proposed revision to the definition of surface mining operation at 25 Pa. Code 86.101 deletes references to surface impacts by underground mining, which is not consistent with SMCRA or the Federal regulations.

As stated in our findings, we promulgated a rule on December 17, 1999, at 30 CFR 761.200(a), concerning our interpretation of the definition of surface coal mining operations. Please refer to that finding for further discussion of the interpretative rule and its application. As previously discussed, we are approving the deletion of the language with the understanding that Pennsylvania will implement the definition of ''surface mining operations'' in the same manner as contemplated by 30 CFR 761.200(a).

6. The deletion of the words ''on or eligible for inclusion'' to the National Register of Historic Places at 25 Pa. Code 86.102(3), so that only sites included on the National Register are protected from mining, conflicts with Section 106 of the National Historic Preservation Act and 36 CFR 800.2.

The Federal rule at 30 CFR 761.11(c) does not prohibit mining that may affect places eligible for listing on the National Register of Historic Places. The Federal rule only prohibits mining that will affect places listed on the National Register of Historic Places. Therefore, we find the proposed revision consistent with Federal law.

7. Revising the regulations at 25 Pa. Code 86.103(e) that require the Department to notify Federal, State, or Local Agencies with jurisdiction over a publicly owned park or place on the National Register of Historic Places when it is determined that the adverse effects will adversely affect the park or place.

The revision by Pennsylvania is to delete ''may'' and insert ''will'' with respect to adversely affect. The Federal regulation at 30 CFR 761.11(d) does not require procedures for joint approval when the publicly owned park or the historic place may be adversely affected by coal mining operations. The Federal rules only require such approval when it will affect such properties. Accordingly, as we have determined in the findings, the proposed revision is no less effective than 30 CFR 761.11(d).

The PHMC also wants the old language of ''historic'' retained in this section. However, the deletion of the word ''historic'' is consistent with the Federal language at 30 CFR 761.11(d). Additionally, Pennsylvania has retained the reference to the National Register of Historic Places.

8. The changes to 25 Pa. Code 86.121 regarding criteria and procedures for designating areas unsuitable for mining does not adequately protect cultural resources because of its emphasis from areas designated as unsuitable for surface mining operations to areas exempt from designation as unsuitable for mining.

Pennsylvania's changes to 25 Pa. Code 86.121 make that section mean the same as the corresponding Federal regulation at 30 CFR 762.13. Because the meaning of that section is the same as the Federal regulation, we have found it to be no less effective than the Federal regulation and we approved it. We did not find that Pennsylvania's change provides less protection to cultural resources.

9. The revisions at 25 Pa. 86.123(c)(5) that give the right to petition only to people who can demonstrate an ''injury in fact'' was objected to because the PHMC believes such a test makes it so that only individuals who own property can petition to have land designated as unsuitable for mining.

Pennsylvania's ''injury in fact'' test is substantively identical to the Federal ''injury in fact'' test at 30 CFR 764.13(a). In its submission, Pennsylvania indicated that the purpose for adding this language is to make the section consistent with the Federal rules. We have determined that the proposed revision is one of the criteria for the right to petition for lands unsuitable. Therefore, we are finding that this proposed change is no less effective than the Federal regulations.

10. The PHMC objects to all the changes where the EQB was replaced by PADEP. PHMC objects to making PADEP responsible for hearing lands unsuitable petitions as would be required in 25 Pa. Code 86.124(c) and 86.125(a) instead of EQB as formerly required.

The Federal regulations at 30 CFR 764.17 require the regulatory authority to conduct hearings. In Pennsylvania, the regulatory authority is PADEP. As a result, Pennsylvania's change does not make it less effective than the corresponding Federal regulations.

11. The PHMC objects to coal exploration within areas designated unsuitable for mining at 25 Pa. Code 86.129(b) and believes it would directly impact cultural resources. The Federal regulations at 30 CFR 762.15 allow coal exploration operations within areas designated unsuitable for mining if such operations are conducted in accordance with the regulatory program. Pennsylvania's regulations at 25 Pa. Code 86.129 and 86.133 require that the exploration will be conducted to preserve and protect the applicable values and uses of the area. Therefore, there will be no impact to such cultural resources. We find that the proposed revisions are no less effective than 30 CFR 762.15.

V. OSM's Decision

Based on the above findings, we approve, with the exceptions noted below, the amendment Pennsylvania sent us on November 22, 1999, that was clarified by letter dated February 13, 2002.

We do not approve 25 Pa. Code 86.124(f) and 25 Pa. Code 86.125(j) to the extent that these sections would allow Pennsylvania more time to complete a final written decision on a lands unsuitable for surface mining activities petition than is allowed by the provisions of the Federal regulations at 30 CFR 764.19(b).

To implement this decision, we are amending the Federal regulations at 30 CFR part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly,

30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Pennsylvania program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will require Pennsylvania to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, these provisions have the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. *See* 64 FR 70766, 70822–27, December 17, 1999. The provisions in the rule based on other counterpart Federal regulations do not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR §§ 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Pennsylvania does not regulate any Native Tribal lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 9, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 938.12 is amended by adding paragraph (b) as follows:

§ 938.12 [Amended]

* * * * *

(b) We are not approving the following portions of provisions of the proposed program amendment that Pennsylvania submitted on November 22, 1999:

(1) Sections 25 Pa. Code 86.124(f) and 25 Pa. Code 86.125(j) are not approved to the extent that these sections would allow Pennsylvania more time to complete a final written decision on a lands unsuitable for surface mining activities petition than is allowed by the provisions of the Federal regulations at 30 CFR 764.19(b).

■ 3. Section 938.15 is amended in the table by adding a new entry in chronological order by ''DATE OF FINAL PUBLICATION'' to read as follows:

§ 938.15 Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
November 22, 1999	July 7, 2003	25 Pa. Code 86.1 definition of ''valid existing rights;'' 86.101 definitions of ''fragile lands,'' ''historic lands,'' ''public building,'' ''public park,'' ''renewable resource lands,'' ''significant recreational value, timber, economic or other values incompatible with surface mining operations,'' and ''surface mining operations;'' 86.102(1), (3) through (5), and (7) through (12); 86.103(c), (d), and (e); 86.121, 86.123(c) and (c)(5); 86.124(a), (c), (d) and (f); 86.125; 86.126; 86.127; 86.128; 86.129; and 86.130(b).

[FR Doc. 03–17078 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[TX–043–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Railroad Commission of Texas, Surface Mining and Reclamation Division (Texas or Commission) proposed to add a new rule to its administrative hearing procedures concerning telephonic hearing proceedings. Texas intends to revise its program to improve operational efficiency.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet address: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions on the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Amendment

By letter dated February 12, 2003 (Administrative Record No. TX–654), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Texas proposed to add Texas Administrative Code (TAC) 1.130 to Title 16, Subchapter G, of its General Rules of Practice and Procedure. This new rule contains the procedures for conducting all or part of a prehearing conference or hearing by telephone.

We announced receipt of the proposed amendment in the April 10, 2003, **Federal Register** (69 FR 17566). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 12, 2003. We did not receive any public comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

16 TAC 1.130 Telephonic Proceedings

As shown below, the Commission's rule at 16 TAC 1.130 outlines the method to request a telephonic

proceeding, how the proceeding will be conducted, the establishment of the record in such a proceeding, and the grounds for a default judgment or a dismissal.

(a) The hearings examiner, on the timely written motion of a party or on the examiner's own motion and with the consent of all parties to a protested proceeding, may conduct all or part of a prehearing conference or hearing by telephone.

(b) A party may request to appear at a prehearing conference or a hearing by telephone.

(1) All motions requesting a telephonic appearance or proceeding shall be in writing, shall be filed at the commission and served on all parties not less than 20 days prior to the proceeding, and shall include the pertinent telephone number(s).

(2) If the request is to conduct only a portion of the proceeding by telephonic means, the requesting party shall specify the part of the proceeding to be conducted telephonically.

(3) If the proceeding involves testimony, the requesting party shall identify the witnesses and, for expert witnesses, their qualifications to testify as experts.

(4) Responses to a request for telephonic appearance shall be made in accordance with § 1.28 of this title (relating to Responsive Pleadings and Emergency Action).

(5) Upon agreement of the parties or a finding of good cause, the examiner may modify the times for filing a request for telephonic appearance and/or responses to such a request, and for filing witness information.

(c) In considering whether conducting all or part of a prehearing conference or hearing by telephone is feasible, the hearings examiner shall ensure that the telephonic hearing will provide due process and will be fair, and shall take into account the following factors:

(1) whether a party's request for such is timely;

(2) whether all parties to a protested proceeding have agreed in writing, filed no later than ten days prior to the proceeding, to conducting all or part of the proceeding via telephone;

(3) whether the parties have demonstrated:

(A) how witnesses will be separated;

(B) how coaching of witnesses will be prevented;

(C) why observing a witness's oral demeanor is adequate to make a reliable determination of the truth of the witness's testimony; and

(D) how the witnesses' and parties' identities will be established;

(4) the number of parties;

(5) the number of witnesses;

(6) the number and type of exhibits;

(7) the distance of the parties or witnesses from Austin;

(8) the nature of the hearing; and

(9) any other pertinent factors which the examiner believes may affect the proceeding.

(d) The hearings examiner shall issue a ruling not less than ten days prior to the proceeding stating whether the proceeding will be conducted, in whole or in part, telephonically. In addition, the examiner shall notify all parties by telephone or by facsimile transmission of the ruling. The parties may waive this notice deadline.

(e) Unless otherwise directed by the hearings examiner, the proponent of any documentary evidence other than prefiled written testimony filed pursuant to the provisions of § 1.105 of this title (relating to Written Testimony) shall serve copies of that evidence on all parties and the hearings examiner no later than five business days prior to the telephonic proceeding. All documentary evidence shall be clearly labeled with the name of the sponsoring party and a unique document number. With the consent of the hearings examiner, a party may supplement or amend evidence less than three days prior to the proceeding or during the proceeding.

(f) All substantive and procedural rights apply to telephonic proceedings, subject only to the limitations of the physical arrangement.

(g) The time and location of telephonic proceedings shall be properly posted, and any person may, by advance request, be present in the room with the hearings examiner.

(h) The hearings examiner shall conduct telephonic proceedings using a speaker telephone. The hearings examiner shall make a tape recording of the telephonic proceeding, or the proceeding may be recorded by a court reporter by prior arrangement, pursuant to § 1.129 of this title (relating to Reporters and Transcripts).

(i) The telephonic proceeding, including arranging the conference call, shall be initiated by the hearings examiner. When all parties appearing telephonically are connected, the hearings examiner shall affirm the parties' consent to the telephonic proceeding.

(1) The hearings examiner shall then call the proceeding to order and ask for all parties to identify themselves, their locations, and their witnesses.

(2) The hearings examiner shall affirm on the record the prior written agreement from all parties consenting to the telephonic appearance or proceeding and shall state whether the proceeding is being memorialized by means of a tape recording or transcription of the proceeding.

(3) The hearings examiner shall administer the oath to each witness individually, prior to his or her testimony.

(j) If the hearings examiner is prevented from establishing the telephonic connection for the proceeding through circumstances which are beyond the control of any party or the examiner; which cannot be attributed to any party's intentional or negligent conduct; and which continue for at least 30 minutes past the time for beginning the hearing, the hearings examiner may postpone, continue, or recess the proceeding, as the hearings examiner deems appropriate, until the earliest possible date and time for the proceeding to be reconvened. The hearings examiner shall state on the record or in writing to all parties the date, time, and location of the reconvened proceeding.

(k) If the hearings examiner decides or any party requests not to proceed with the telephonic proceeding at any time, or asserts that the presence of one or more of the parties or witnesses in the hearing room is necessary for full disclosure of the facts and states the reasons for such an assertion, the hearings examiner may postpone, continue, or recess the proceeding, as the hearings examiner deems appropriate, until the earliest possible date and time for the proceeding to be reconvened with all participants present in person. The examiner shall state on the record and in writing to all parties the reasons for terminating the telephonic proceeding and the date, time, and location of the reconvened proceeding.

(l) The commission may consider the following events to constitute a failure to appear and grounds for default or dismissal:

(1) failure to answer the telephone for more than 10 minutes after the scheduled time for the proceeding;

(2) failure to free the telephone for the proceeding for more than 10 minutes after the scheduled time for the proceeding;

(3) failure to be ready to proceed with the proceeding within 10 minutes of the scheduled time; and

(4) a party's intentional disconnection from the call.

(m) In the event of accidental disconnection of one or more parties to the proceeding, the hearings examiner shall immediately recess the hearing and attempt to re-establish the connection or connections.

(1) If reconnection is achieved within 30 minutes, the hearings examiner may resume the telephonic hearing, or may postpone, continue, or recess the proceeding, as the hearings examiner deems appropriate, until the earliest possible date and time for the proceeding to be reconvened. The examiner shall state on the record or in writing to all parties the date, time, and location of the reconvened proceeding.

(2) If reconnection cannot be achieved within 30 minutes, then the hearings examiner shall recess the telephonic proceeding until a date and time certain and at a location specified in a written notice of reconvened hearing.

There are no Federal counterparts to the Commission's proposal to conduct all or part of a prehearing conference or administrative hearing by telephone. Neither SMCRA at section 525 nor the Federal regulations at 30 CFR 775.11 and 43 CFR part 4 address telephonic proceedings. However, nothing in the Commission's proposed rule supersedes or replaces its previously approved general rules of practice and procedures for hearings. The Commission is merely offering another method by which parties may appear at prehearing conferences or hearings. The proposed procedures for telephonic proceedings will provide due process for all parties involved in a prehearing conference or hearing. As stated in 16 TAC 1.130(c), the hearings examiner must ensure that the telephonic hearing will provide due process and will be fair. Black's Law Dictionary, Seventh Edition, defines due

process as the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case. Also, as provided in 16 TAC 1.130(f), all substantive and procedural rights apply to telephonic proceedings. While there are no Federal counterpart provisions concerning telephonic proceedings, we find that the provisions of the proposed rule at 16 TAC 1.130 are not inconsistent with the Federal general rules relating to procedure and practice for administrative hearings found at 30 CFR 775.11(b)(3), 43 CFR 4.20–4.24, and 43 CFR 4.1104–4.1115. Therefore, we are approving them.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On February 26, 2003, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–654.01). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On February 26, 2003, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX–654.01). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 26, 2003, we requested comments on Texas' amendment (Administrative Record No. TX–654.01), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Texas sent us on February 12, 2003.

To implement this decision, we are amending the Federal regulations at 30 CFR part 943, which codify decisions concerning the Texas program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the

National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 5, 2003.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 943 is amended as set forth below:

PART 943—TEXAS

■ 1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 943.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
February 12, 2003	July 7, 2003	16 TAC § 1.130

[FR Doc. 03–17082 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–098–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving, with one exception, a proposed amendment to the West Virginia surface coal mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in House Bills 2881 and 2882, and changes to the State's Coal Related Dam Safety Rules at Code of State Regulations (CSR) 38–4, and West Virginia's Surface Mining Reclamation Regulations at CSR 38–2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements, drainage and sediment control systems, fish and wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and performance standards applicable to remining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158; Internet address: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated March 18, 2003, the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program (Administrative Record Number WV–1352) under SMCRA (30 U.S.C. 1201 *et seq.*). West Virginia submitted the amendment in response to the required program amendments at 30 CFR 948.16(nnn), (ooo), and (qqqq) and made other changes at its own initiative.

We announced receipt of the proposed amendment in the April 14, 2003, **Federal Register** (68 FR 17896). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment (Administrative Record Number WV–1358). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on May 14, 2003. We received comments from two Federal agencies.

III. OSM's Findings

Following are the findings we made pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 concerning the proposed amendment to the West Virginia program. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes and are approved here without discussion.

The program amendment consists of changes to the W. Va. Code as contained in House Bills 2881 and 2882, and changes to the State's Coal Related Dam Safety Rule at CSR 38–4 and to the Surface Mining Reclamation Regulations at CSR 38–2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements, drainage and sediment control systems, fish and wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and remining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

In order to expedite our review of the provisions that concern the recommendations of West Virginia's 2002 Flood Study (Governor's Executive Order No. 16–01), we have separated the amendment relating to CSR 38–4 Coal Related Dam Safety Rule and will address those proposed amendments in a separate **Federal Register** notice at a later date, except for CSR 38–4–25.14 which is addressed below at Finding 31. In addition, the proposed amendment to CSR 38–2–3.31.a is similar to language that we are currently considering under a separate program amendment. Therefore, we are removing the proposed amendment to CSR 38–2–3.31.a from the current amendment, and we will address the proposed amendment to CSR 38–2–3.31.a in a separate **Federal Register** notice at a later date. Our findings relating to the W. Va. Code and the remainder of the amendments to West Virginia's Surface Mining Reclamation Regulations are detailed below.

1. As described in Committee Substitute for House Bill 2881, W. Va. Code 22–3–23(a)–(h), concerning release of bond or deposits, are amended by changing the term ''director'' to ''secretary'' in numerous locations, and by changing the term ''division'' to ''department'' in one location. We find that these amendments accurately reflect the current organization of the WVDEP and do not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

2. As described in Committee Substitute for House Bill 2881, W. Va. Code 22–3–23(c)(1)(C), concerning bond release for all operations that are being returned to approximate original contour (AOC), is amended by adding the following language to the end of the last sentence: ''where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.'' As amended, the sentence reads as follows:

> ''Provided, however, that the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.''

On July 11, 1985, OSM disapproved and on August 29, 1985, OSM preempted and superseded the language of the proviso that is being amended here (50 FR 28316, 28319 and 50 FR 35082, 35083, respectively). At that time, the proviso was located at W. Va. Code 22A–3–23(c)(3). OSM took that action because under certain circumstances, the proviso would permit final bond release prior to attainment of revegetation standards in accordance with the approved reclamation plan. OSM took that action after determining that the provision was inconsistent with section 519(c)(3) of SMCRA, based on the reasons cited in Finding 6 of the July 11, 1985, **Federal Register** notice.

The language that is being added to the proviso has the effect of limiting the application of the proviso to only those regulations where such alternative water quality standards are specifically authorized. This amendment renders the language of this proviso inoffensive to section 519(c)(3) of SMCRA, because the circumstances of its applicability will be dictated by specific regulations that were promulgated in accordance with the Clean Water Act. Therefore, the specific implementing regulations authorized by this proviso must be evaluated relative to the requirements of section 519(c)(3) of SMCRA. Indeed, the State has amended its bond release requirements that apply only to remining operations at CSR 38–2–24.4, and that amendment directly relates to this proviso. See Finding 35, below for our finding on the amendment to CSR 38–2–24.4. We find that, as amended, and for the reasons further explained in Finding 35, below, the proviso at W. Va. Code 22–3–23(c)(1)(C) as quoted above is not inconsistent with SMCRA section 519(c)(3) and can be approved.

3. As described in Committee Substitute for House Bill 2881, W. Va. Code 22–3–23(c)(2)(C), concerning bond release for operations with an approved variance from AOC, is amended by adding the following language to the end of the last sentence: ''where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.'' This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(qqqq). As amended, the sentence reads as follows:

> Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

For the same reasons discussed directly above at Finding 2, we find that the amended proviso at W. Va. Code 22–3–23(c)(2)(C) is not inconsistent with SMCRA section 519(c)(3) and can be approved. Furthermore, we also find that this amendment satisfies the required program amendment codified at 30 CFR 948.16(qqqq), which can be removed.

W. Va. Code 22–3–23(c)(2)(C) is also amended by deleting the reference to subdivision 3 and continuing to require compliance with the bond release scheduling requirements of subdivisions 1 and 2 of this subsection. This change corrects a typographical error, in that

there is no subdivision 3 at subsection 22–3–23(c). We find, therefore, that this amendment does not render the provision less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

4. As described in Committee Substitute for House Bill 2881, W. Va. Code 22B–1–7, concerning appeals to boards, is amended by changing the term ''director'' to ''secretary'' in several locations. We find that these amendments accurately reflect the current organization of the WVDEP and do not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

5. As described in House Bill 2882, W. Va. Code 22B–1–7(d), concerning appeals to boards, is amended by adding a proviso that unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or official action for an order issued pursuant to W. Va. Code 22–3. This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(nnn), which provides that West Virginia must revise Section 22B–1–7(d) to remove unjust hardship as a criterion to support the granting of temporary relief from an order or other decision issued under Chapter 22, Article 3 of the West Virginia Code. As discussed in the **Federal Register** on March 4, 2003, we reinstated this required amendment in order to comply with U.S. District Court Judge Haden's ruling of January 9, 2003 (68 FR 10178).

We find that as amended, section 22B–1–7(d) satisfies the required program amendment codified at 30 CFR 948.16(nnn) that unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or official action for an order issued pursuant to W. Va. Code 22–3 and can be approved. Therefore, the required amendment at 30 CFR 948.16(nnn) can be removed.

6. As described in House Bill 2882, W. Va. Code 22B–1–7(h), concerning appeals to boards, is amended by deleting the reference to article ''three'' in regard to appeals to the environmental quality board. This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(ooo), which provides that West Virginia must revise Section 22B–1–7(h) by removing reference to Article 3, Chapter 22, of the West Virginia Code. As discussed in the **Federal Register** on March 4, 2003, we reinstated this required amendment in order to comply with U.S. District Court Judge Haden's ruling of January 9, 2003 (68 FR 10178).

We find that the deletion of the word ''three'' satisfies the required program amendment codified at 30 CFR 948.16(ooo) and can be approved. Therefore, the required amendment at 30 CFR 948.16(ooo) can be removed.

The following regulatory revisions are described in Committee Substitute for House Bill 2603.

7. CSR 38–2 is amended by updating the name of the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service) in several locations, *i.e.*, subsections 3.2.c, 3.20, 10.2.a.4, 10.3.a.1, 10.4.c.1, 10.6.b.2, 10.6.b.7.A, 10.6.b.7.B, and 10.6.b.8. We find that these changes accurately reflect the current name of the NRCS and can be approved.

8. CSR 38–2–3.7.d, concerning disposal of excess spoil, is new and adds a requirement for a survey of the watershed identifying all man made structures and residents in proximity to the disposal area to determine potential storm runoff impacts. At least 30 days prior to any beginning of placement of material, the accuracy of the survey shall be field verified. Any changes shall be documented and brought to the attention of the Secretary to determine if there is a need to revise the permit. There is no direct Federal counterpart to this provision. We find, however, that this new provision is consistent with the Federal permit application requirement at 30 CFR 780.35 concerning the disposal of excess spoil and can be approved.

9. CSR 38–2–3.22.f.5.A, A.1 and A.2, concerning hydrologic information required in a permit application, is amended. This language is new and requires that the hydrologic reclamation plan contain a description of the measures that will be taken to replace water supplies that are contaminated, diminished, or interrupted. The plan shall include an identification of the water replacement, which includes quantity and quality descriptions including discharge rates, or usage and depth to water; and documentation that the development of identified water replacement is feasible and that the financial resources necessary to replace the affected water supply are available. We find that this new language is consistent with the Federal permitting requirements at 30 CFR 780.21(h), 784.14(g) concerning the hydrologic reclamation plan, and 30 CFR 784.20(b)(8), pertaining to subsidence control plans, and can be approved.

10. CSR 38–2–5.4.b.4, concerning sediment control, is amended by adding language to provide that all sediment control systems for valley fills, including durable rock fills, shall be designed for the entire disturbed acreage of the fill and shall include a schedule indicating timing and sequence of construction over the life of the fill. There is no direct Federal counterpart to the proposed language. We find that the proposed language is not inconsistent with the Federal design provisions concerning sediment control structures at 30 CFR 780.25(b) and 784.16(b), and can be approved.

11. CSR 38–2–5.4.b.11, concerning the control of water discharge, is amended by adding language to provide that the location of discharge points and the volume to be released shall not cause a net increase in peak runoff from the proposed permit area when compared to premining conditions and shall be compatible with the post-mining configuration and adequately address watershed transfer. There is no direct Federal counterpart to this proposed language. We find, however, that the proposed language is not inconsistent with the Federal requirements at 30 CFR 816/817.47 concerning discharge structures and can be approved.

12. CSR 38–2–5.6, storm water runoff, is a new provision and requires each permit application to contain a storm water runoff analysis consistent with subsections 5.6.a through 5.6.d.1.e. The new language provides as follows:

5.6.a. Each application for a permit shall contain a storm water runoff analysis which includes the following:

5.6.a.1. An analysis showing the changes in storm runoff caused by the proposed operations(s) using standard engineering and hydrologic practices and assumptions.

5.6.a.2. The analysis will evaluate pre-mining, worst case during mining, and post-mining (Phase III standards) conditions. The storm used for the analysis will be the largest required design storm for any sediment control or other water retention structure proposed in the application. The analysis must take into account all allowable operational clearing and grubbing activities. The applicant will establish evaluation points on a case-by-case basis depending on site specific conditions including, but not limited to, type of operation and proximity of man-made structures.

5.6.a.3. The worst case during mining and post-mining evaluations must show no net increase in peak runoff compared to the pre-mining evaluation.

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must

record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) [hour] storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval within the schedule described in 5.6.d.1. Full comlpliance [compliance] with the permit revision shall be accomplished within 180 days from the date of Secretary approval. Active mining operations for the purpose of this subsection exclude permits that have obtained at least a Phase I release and are vegetated. Provided, however, permits or portions of permits that meet at least Phase I standards and are vegetated will be considered on a case by case basis.

5.6.d.1. Schedule of Submittal

5.6.d.1.a. Within 180 days from the first day of January two thousand four all active mining operations with permitted acreage greater than 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.b. Within 360 days from the first day of January two thousand four all active mining operations with permitted acreage between 200 and 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January two thousand four all active mining operations with permitted acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January two thousand four all active mining operations with permitted acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.e. Within 900 days from the first day of January two thousand four all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval. Provided, however, an exemption may be considered on a case by case basis. Futhermore [Furthermore], haulroads, loadouts, and ventilation facilities are excluded from this requirement.

There is no direct Federal counterpart to these provisions concerning storm water runoff. However, we find that these provisions are not inconsistent with the Federal requirements at 30 CFR 816/817.41 through 816/817.47, which require that all surface mining and reclamation activities be conducted to prevent material damage to the hydrologic balance outside the permit area, and can be approved. We note that at subsection CSR 38–2–5.6.b, the word ''hour'' is missing in the phrase ''one (1) year, twenty-four (24) storm event.'' The phrase should read, ''one (1) year, twenty-four (24) hour storm event.'' We understand this to be an inadvertent omission that will be corrected at a future date.

13. CSR 38–2–8.2.e, concerning fish and wildlife considerations, is amended by adding language to provide that in planning and constructing a windrow, the windrow shall not be placed in such manner or location to block natural drainways. We approved CSR 38–2–8.2.e on February 9, 1999 (64 FR 6201, 6209–6210). The proposed amendment to this provision is intended to make it clear that, so as not to impound water, timber used to create a windrow must not be placed in a manner or location that would block natural drainways. There is no direct Federal counterpart to this proposed language. However, we find that the proposed language does not render this provision inconsistent with SMCRA at section 515(d)(1) or less effective than the Federal regulations at 30 CFR 816/817.107(b) and can be approved. We note that this amended provision contains an inadvertent grammatical error. The amended sentence provides as follows: ''In planning and constructing the windrow, care shall be taken not to impound water or and shall not be placed in such manner or location to block natural drainways.'' We understand the amended sentence to mean that in planning and constructing a windrow, care shall be taken so that the windrow not impound water or be placed in such manner or location to block natural drainways. Our approval of this provision is based upon our understanding that the inadvertent grammatical error will be corrected at a future date.

14. CSR 38–2–9.1.a, concerning revegetation, is amended by adding language to provide that reforestation opportunities must be maximized for all areas not directly associated with the primary approved postmining land use; and revegetation plans for those areas to be reforested must include a map, a planting schedule and stocking rates. The intent of this provision is to encourage tree planting and reforestation where traditionally grasslands might be the revegetation of choice. There is no direct Federal counterpart to this proposed language. However, we find that the proposed language is not inconsistent with the Federal requirements concerning revegetation at 30 CFR 816/817.111(a) and can be approved.

15. CSR 38–2–9.3.d, concerning standards for evaluating vegetative cover, is amended by deleting the words ''from the Handbook,'' so that sampling techniques will no longer be taken from the State's technical handbook. This deletion does not render the provision less effective than the Federal revegetation requirements at 30 CFR 816/817.116(a), because the State's statistically valid sampling techniques for measuring ground cover and productivity are no longer contained in the Handbook. The WVDEP submitted a policy entitled ''Productivity and Ground Cover Success Standards'' that we approved in the **Federal Register** on May 1, 2002 (67 FR 21904, 21906–21907). The State's statistically valid sampling techniques for measuring ground cover and productivity are set forth in the May 1, 2002, policy. Therefore, we find that the deletion of the words ''from the Handbook'' does not render the West Virginia program less effective than the Federal requirements and can be approved.

16. CSR 38–2–9.3.f, concerning standards for evaluating vegetative cover and productivity, is amended by deleting the words ''in the Handbook,'' and replacing those words with the words ''by the Secretary.'' The effect of the change is that vegetation ground cover and productivity levels will be set by the Secretary of the WVDEP, rather than as provided in the State's technical handbook. The deletion of the phrase ''in the Handbook'' and its replacement by the phrase ''by the Secretary'' does

not render the provision less effective than the Federal revegetation standards at 30 CFR 816/817.116(a), because the Secretary of WVDEP will set the productivity success standards for the State. The WVDEP submitted a policy establishing such success standards that we approved in the **Federal Register** on May 1, 2002 (67 FR 21904, 21906–21907). The State's productivity success standards for hayland, pastureland, rangeland and cropland are set forth in that policy. Therefore, we find that the proposed amendments do not render the West Virginia program less effective than the Federal requirements and can be approved.

17. CSR 38–2–14.5.h, concerning hydrologic balance, is amended by adding a proviso which provides that the requirement for replacement of an affected water supply that is needed for the land use in existence at the time of contamination, diminution or interruption or where the affected water supply is necessary to achieve the post-mining land use shall not be waived. This amendment is intended to satisfy the required program amendment codified at 30 CFR 948.16(sss). As discussed in the **Federal Register** dated March 4, 2003, we reinstated this required amendment in order to comply with U.S. District Court Judge Haden's ruling of January 9, 2003 (68 FR 10178).

The required program amendment codified at 30 CFR 948.16(sss) provides that the West Virginia program must be amended to clarify that the replacement of water supply can only be waived under the conditions set forth in the definition of ''Replacement of water supply,'' paragraph (b), at 30 CFR 701.5, which provides as follows:

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

We find that the proposed language provides a counterpart to the Federal requirement that limits waivers of water supply replacement to only those cases where the affected water supply is not needed for the current or proposed postmining land use. Therefore, the proposed amendment can be approved. In addition, we find that it is reasonable to presume that a waiver authorized under W. Va. Code 22–3–24(b) and CSR 38–2–14.5.h would be in writing. However, we recommend that the State amend subsection CSR 38–2–14.5.h to clarify that a waiver of water supply replacement be in writing. Finally, the CSR 38–2–14.5.h continues to lack a requirement that a waiver can only be approved where it is demonstrated that a suitable alternative water source is available and could feasibly be developed. Therefore, we will revise the required program amendment at 30 CFR 948.16(sss) to require that CSR 38–2–14.5.h be further amended to provide a counterpart to the Federal requirement in the definition of ''Replacement of water supply,'' paragraph (b), at 30 CFR 701.5, which provides that replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed.

18. CSR 38–2–14.14.g.1 is amended by adding language to provide that durable rock fills proposed after January 1, 2004, may only be approved with the design, construction, and use of a single lift fill if they include an erosion protection zone or a durable rock fill designed to be reclaimed from the ''tow'' [toe] upward. There is no direct counterpart to the proposed language in the Federal regulations concerning the design of durable rock fills. However, we find that the proposed requirements do not render CSR 38–2–14.14.g.1 less effective than the Federal regulations regarding durable rock fills at 30 CFR 816/817.73 and can be approved. We note the inadvertent typographical error (''tow'' should be ''toe'') and understand that it will be corrected at a future date.

19. CSR 38–2–14.14.g.2 is new and adds design specifications and requirements for single lift fills with an erosion protection zone. The new language provides as follows:

14.14.g.2.A. Erosion Protection Zone. The erosion protection zone is a designed structure constructed to provide energy dissipation to minimize erosion vulnerability and may extend beyond the designed toe of the fill.

14.14.g.2.A.1. The effective length of the erosion protection zone shall be at least one half the height of the fill measured to the target fill elevation or fill design elevation as defined in the approximate original contour procedures and shall be designed to provide a continuous underdrain extension from the fill through and beneath the erosion protection zone.

14.14.g.2.A.2. The height of the erosion protection zone shall be sufficient to accommodate designed flow from the underdrain of the fill and shall comply with 14.14.e.1. of this rule.

14.14.g.2.A.3. The erosion protection zone shall be constructed of durable rock as defined in 14.14.g.1. originating from a permit area and shall be of sufficient gradation to satisfy the underdrain function of the fill.

14.14.g.2.A.4. The outer slope or face of the erosion protection zone shall be no steeper than two (2) horizontal or one (1) vertical (2:1). The top of the erosion protection zone shall slope toward the fill at a three (3) to five (5) percent grade and slope laterally from the center toward the sides at one (1) percent grade to discharge channels capable of passing the peak runoff of a one-hundred (100) year, twenty-four (24) hour precipitation event.

14.14.g.2.A.5. Prior to commencement of single lift construction of the durable rock fill, the erosion protection zone must be seeded and certified by a registered professional engineer as a critical phase of fill construction. The erosion protection zone shall be maintained until completion of reclamation of the fill.

14.14.g.2.A.6. Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be regarded [regraded] and revegetated in accordance with the reclamation plan.

14.14.g.2.B. Single Lift Construction Requirements.

14.14.g.2.B.1. Excess spoil disposal shall commence at the head of the hollow and proceed downstream to the final toe. Unless required for construction of the underdrain, there shall be no material placed in the fill from the sides of the valley more that [than] 300 feet ahead of the advancing toe. Exceptions from side placement of material limits may be approved by the Secretary if requested and the applicant can demonstrate through sound engineering that it is necessary to facilitate access to isolated coal seams, the head of the hollow or otherwise facilitates fill stability, erosion, or drainage control.

14.14.g.2.B.2. During construction, the fill shall be designed and maintained in such a manner as to prevent water from discharging over the face of the fill.

14.14.g.2.B.2.(a). The top of the fill shall be configured to prevent water from discharging over the face of the fill and to direct water to the sides of the fill.

14.14.g.2.B.2.(b). Water discharging along the edges of the fill shall be conveyed in such a manner to minimize erosion along the edges of the fill.

14.14.g.2.B.3. Reclamation of the fill shall be initiated from the top of the fill and progress to the toe with concurrent construction of terraces and permanent drainage.

The proposed provisions are more detailed than, but are not inconsistent

with, the Federal requirements for durable rock fills at 30 CFR 816/817.73. Neither SMCRA nor the Federal regulations prohibit the construction of single-lift durable rock fills. However, the Environmental Protection Agency (EPA) commented on the proposed amendments and provided a conditional approval of CSR 38–2–14.14.g.2.A.6 concerning the removal of erosion protection zones following mining. See Section IV, Summary and Disposition of Comments, below, for a complete discussion of EPA's comments.

The EPA stated that it is concerned that erosion protection zones (EPZs) may result in permanent stream fills after completion of mining. According to CSR 38–2–14.14.g.2.A.1, the EPA stated, a 250-foot long EPZ would be required for a 500-foot high valley fill, which, EPA stated, is not unusual in southern West Virginia. Although Section 14.14.g.2.A.6 requires EPZ removal, regrading, and revegetating after mining, EPA stated, it does not appear to include removal of the stream fill associated with the EPZ or reconstruction of the stream channel.

The EPA stated that it concurs with the proposed revisions under the condition that a requirement be included to remove stream fills associated with EPZs after mining and reconstruct the stream channels.

Therefore, and considering EPA's conditional concurrence as noted above, we find that these new design specifications and requirements for single-lift fills with an erosion protection zone do not render the West Virginia program less effective than the Federal durable rock fill requirements at 30 CFR 816/817.71 and 816/817.73 and can be approved with the following exceptions.

At CSR 38–2–14.14.g.2.A.6, we are not approving the words ''[u]nless otherwise approved in the reclamation plan'' because leaving an EPZ in place would be inconsistent with EPA's conditional concurrence to remove stream fills associated with EPZs and to reconstruct the stream channels after mining. We are approving CSR 38–2–14.14.g.2.A.6 only to the extent that following mining, all stream fills associated with EPZs will be removed and the stream channels shall be reconstructed in the manner described at CSR 38–2–5.3 and 14.4.a concerning stream diversions.

20. CSR 38–2–14.14.g.3 is new and adds design specifications and requirements at 14.14.g.3 through 14.14.g.3.B for durable rock fills designed to be reclaimed from the toe upward. The new language provides as follows:

14.14.g.3.A. Transportation of material to toe of fill. The method of transporting material to the toe of the fill shall be specified in the application and shall include a plan for inclement weather dumping. The means of transporting material to the toe may be by any method authorized by the Act [the West Virginia Surface Coal Mining and Reclamation Act] and this rule and is not limited to the use of roads.

14.14.g.3.A.1. Constructed roads shall be graded and sloped in such a manner that water does not discharge over the face. Sumps shall be constructed along the road in switchback areas and shall be located at least 15 feet from the outslope.

14.14.g.3.A.2. The constructed road shall be in compliance with all applicable State and Federal safety requirements. The design criteria to comply with all applicable State and Federal safety requirements shall be included in the permit.

14.14.g.3.B. Once the necessary volume of material has been transported to the toe of the fill, face construction and installation of terraces and permanent drainage shall commence. The face construction and reclamation of the fill shall be from the bottom up with progressive construction of terraces and permanent drainage in dumping increments not to exceed 100 feet.

The proposed provisions are more detailed than, but are not inconsistent with, the Federal requirements for durable rock fills at 30 CFR 816/817.73. Therefore, we find that these new design specifications and requirements for durable rock fills designed to be reclaimed from the toe upward do not render the West Virginia program less effective than the Federal durable rock fill requirements at 30 CFR 816/817.71 and 816/817.73 and can be approved. In addition, we are approving these requirements with the understanding that if roads are not used to transport the excess material as provided in subsection 14.14.g.3.A, the alternative means of transportation will ensure that the excess spoil will be transported to the toe of the fill and placed in a controlled manner as provided by CSR 38–2–14.14.a.2 and 30 CFR 816/817.71(e)(2).

21. CSR 38–2–14.15.a.2, concerning contemporaneous reclamation standards, is amended by adding language to provide that the mining and reclamation plan shall contain information on how mining and reclamation operations will be coordinated so as to minimize surface water runoff, and comply with the storm water runoff plan. There is no direct Federal counterpart to the proposed language. We find, however, that the proposed language is not inconsistent with the Federal regulations at 30 CFR 816/817.100 concerning contemporaneous reclamation and can be approved.

22. CSR 38–2–14.15.c, concerning reclaimed area, is amended by adding the words ''and seeding has occurred'' to the definition of reclaimed acreage that is applicable to this subsection. As amended, the definition of reclaimed area provides that for purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan, meets Phase I standards, and seeding has occurred. We find that the amendment to this provision does not render the West Virginia rule less effective than the Federal regulations concerning contemporaneous reclamation at 30 CFR 816/817.100 and bond release at 30 CFR 800.40(c) can be approved.

23. CSR 38–2–14.15.g, concerning contemporaneous reclamation variance—permit applications, is amended by adding language to require a demonstration that the variance being sought will comply with CSR 38–2–5.6 concerning the new storm water runoff provisions. There are no counterpart Federal requirements to the new West Virginia storm water runoff provisions at CSR 38–2–5.6. We find, however, that the amendment to this provision does not render the West Virginia rule less effective than the Federal regulations concerning contemporaneous reclamation at 30 CFR 816/817.100 and can be approved.

24. CSR 38–2–17.1, concerning Small Operator Assistance Program (SOAP), is amended by adding that the Secretary of WVDEP shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to CSR 38–2–17. This new language provides the West Virginia program with a counterpart to the Federal requirement at 30 CFR 795.11(b) and can be approved. We note that the State must now actually establish a formula for allocating SOAP funds.

25. CSR 38–2–20.6.a, concerning civil penalty assessments, is amended by deleting all language concerning an ''assessment officer,'' and adding language concerning the Secretary of WVDEP. The new language provides that the Secretary shall not determine the proposed penalty assessment until such time as an inspection of the violation has been conducted and the findings of that inspection are submitted

to the Secretary in writing. The Secretary must conduct the inspection of the violation within the first 15 days after the notice or order was served. We find that, as amended, the State's civil penalty assessment procedures are the same as or similar to those contained in section 518 of SMCRA, are consistent with the Federal procedures concerning civil penalty assessment at 30 CFR 845.17, and can be approved.

26. CSR 38–2–20.6.c, concerning notice of civil penalty assessment, is amended by deleting two sentences that provide that the ''Secretary shall also give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within thirty (30) days following the date of the conference. The reasons for reassessment shall be documented in the file by the assessment officer.'' Also, the following sentence is added immediately before the existing last sentence: ''The reasons for reassessment shall be documented in the file by the Secretary.'' The two sentences that were deleted from this provision pertain to procedures for an informal conference, and were relocated to CSR 38–2–20.6.e concerning informal conference. We find that the amendments to CSR 38–2–20.6.c do not render the provision inconsistent with the Federal provisions concerning procedures for assessment of civil penalties at 30 CFR 845.17(b) and (c), and 845.18(c) and can be approved.

27. CSR 38–2–20.6.d, concerning notice of informal assessment conference, is amended by adding language to provide that the Secretary shall arrange for a conference to review the proposed assessment or reassessment, upon written request if received within 15 days from the date the proposed assessment or reassessment is received. Language is also added to provide that the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account, and that the Secretary shall assign an assessment officer to hold the assessment conference.

We find that the new language is similar to and therefore consistent with the Federal provision at 30 CFR 845.18(a) concerning procedures for assessment conference even though it provides a shorter period in which to request an informal conference. We also find that requiring the operator to forward the amount of the proposed penalty assessment to the Secretary of the WVDEP prior to an assessment conference is not inconsistent with the Federal provision at 30 CFR 845.19. The Federal rule at 30 CFR 845.19 concerns request for a hearing, and provides that the person charged with the violation may contest the proposed penalty reassessment by submitting a petition and an amount equal to the proposed penalty for placement in an escrow account. Therefore, we find that the proposed language can be approved.

28. CSR 38–2–20.6.e, concerning informal conference, is amended by adding language to provide that the assessment officer shall give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within 30 days following the date of the conference. The reasons for the assessment officer's action shall be documented in the file. This language was relocated from the approved program at CSR 38–2–20.6.c, and appropriately placed in this subsection concerning informal conference. We find that this amendment is consistent with the Federal provisions concerning procedures for assessment conference at 30 CFR 845.18(c) and can be approved.

29. CSR 38–2–20.6.f is new and adds the requirement that an increase or reduction of a proposed civil penalty of more than 25 percent and more than $500.00 shall not be final and binding until approved by the Secretary. We find that this provision is substantively identical to the Federal regulations at 30 CFR 845.18(b)(4) concerning procedures for assessment conference and can be approved.

30. CSR 38–2–20.6.j, concerning escrow, is amended by adding the phrase ''an informal conference or'' immediately before the words ''judicial review of a proposed assessment.'' In addition, the words ''continue to'' are deleted immediately before the words ''be held in escrow.'' The amended provision provides that if a person requests an informal conference or judicial review of a proposed assessment, the proposed penalty assessment shall be held in escrow until completion of the judicial review. We find that this provision as amended is not inconsistent with the Federal provision at 30 CFR 845.19(b), which provides that funds placed in escrow shall he held in escrow pending completion of the administrative and judicial review process. Therefore, the amendments to CSR 38–2–20.6.j can be approved.

31. CSR 38–2–22.4.g.3.A concerns the design of Class C-type coal refuse impoundments without discharge structures that must be capable of storing a minimum of two six hour duration probable maximum storms. This provision is amended by deleting the second sentence and adding three sentences in its place. The new language requires that a system shall be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or other means. The new language also states that the requirements of the Coal Related Dam Safety Rule at CSR 38–4–25.14, concerning removal of storm water from impoundments, shall be met. For existing structures exceeding the minimum two PMP (Probable Maximum Precipitation) volume requirement, the dewatering system shall be installed when the containment volume is reduced to two PMPs.

The proposed language that requires a system to be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or by other means is consistent with the State's performance standard for coal refuse impoundments provision at CSR 38–2–22.5.j.5, which provides that impounding structures constructed of or impounding coal mine refuse shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period. The substantively identical Federal counterpart to CSR 38–2–22.5.j.5 is contained in 30 CFR 816/817.84(e). We find that the proposed design standard is no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(c)(2)(i) and 816/817.84(e) and can be approved.

The proposed new language also provides that the requirements of the Coal Related Dam Safety Rule at CSR 38–4–25.14, concerning removal of storm water from impoundments, shall be met. We are currently reviewing the State's Coal Related Dam Safety Rule at CSR 38–4 under a separate program amendment submitted by the State. However, since CSR 38–4–25.14 is relevant to the proposed amendment at CSR 38–2–22.4.g.3.A, we will address the State's Coal Related Dam Safety Rule at CSR 38–4–25.14 here.

Proposed CSR 38–4–25.14 provides as follows:

> 25.14. Storm water in the impoundment shall be removed as specified in the design requirements. In addition, the slurry impoundment pool shall be maintained at the lowest practical pool level based upon the design requirements and the AHCF [Assessment of Hazards and Consequences of Failure; see CSR 38–4–3.4.c]. The mechanical storm dewatering system shall be installed as designed and maintained properly with the system being tested monthly.

Proposed CSR 38–4–25.14 provides, in effect, a counterpart to the Federal regulations at 30 CFR 816/817.84(f),

concerning the performance standard for impounding structures constructed of or impounding coal mine waste. The regulation at 30 CFR 816/817.84(f) provides that for an impounding structure constructed of or impounding coal mine waste, at least 90 percent of the water stored during the design precipitation event shall be removed within the 10-day period following the design precipitation event. We find that the proposed language at CSR 38–2–22.4.g.3.A, which requires that the Coal Related Dam Safety Rule at CSR 38–4–25.14 be met, together with the proposed regulation at CSR 38–4–25.14 are no less effective than the counterpart Federal regulations at 30 CFR 816/817.84(f) and can be approved.

The proposed new language also requires that for existing structures exceeding the minimum 2 PMP volume requirement, the ''dewatering system'' shall be installed when the containment volume is reduced to 2 PMPs. While the language does not specifically state that the ''dewatering system'' referred to is the same system as described at CSR 38–2–22.4.g.3.A, we interpret this provision to mean the same. That is, the system shall be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or other means, and the requirements of the Coal Related Dam Safety Rule at CSR 38–4–25.14, concerning removal of storm water from impoundments shall also be met. There is no Federal counterpart to this provision. We find, however, that the provision is not unreasonable, and that the proposed design standard is no less effective than the counterpart Federal regulations at 30 CFR 816/817.49(c)(2)(i) and 816/817.84(e) and can be approved.

32. CSR 38–2–22.4.i.6 is new and concerns the use of corrugated metal pipes in spillways. This provision provides that corrugated metal pipes, whether coated or uncoated, shall not be used in new or unconstructed refuse impoundments or slurry cells. If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated metal pipe to be either repaired or replaced. We find that the provision is consistent with the Federal regulation at 30 CFR 816/817.84(c) which provides that spillways and outlet works of coal mine waste impounding structures shall be designed to provide adequate protection against erosion and corrosion, and that inlets shall be protected against blockage. Therefore, we are approving the provision.

33. CSR 38–2–24.2.a, concerning the revegetation of remining operations, is amended by deleting the words ''in the Handbook'' at the end of the last sentence, and replacing those words with the words ''by the Secretary.'' The new revision provides that the determination of premining ground cover success and productivity shall be made using sampling techniques described by the Secretary. The WVDEP submitted a policy identifying statistically valid sampling techniques for measuring ground cover and productivity success that we approved on May 1, 2002 (67 FR 21904, 21906–21907). Therefore, we find that the deletion of the words ''from the Handbook'' does not render the West Virginia program less effective than the Federal regulations and can be approved.

34. CSR 38–2–24.3 concerns water quality exemptions for coal remining operations. This provision is amended by adding the following language at the end of the last sentence: ''or a coal remining operation as defined in 40 CFR part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR part 434 as amended.'' The amended provision provides that a coal remining operation which began after February 4, 1987, and on a site which was mined prior to August 3, 1977, may qualify for the water quality exemptions set forth in subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR part 434 as amended.

The existing language of this provision incorporates the added flexibility provided by the 1987 revision to the Clean Water Act that added section 301(p) (33 U.S.C. 1311(p)), often called the Rahall Amendment, that provides incentives for remining abandoned mine lands that predate the passage of SMCRA. The State's proposed language is intended to incorporate the added flexibility provided by amendments to the Federal regulations at 40 CFR 434.70–434.75, which added effluent limitations and performance standards to a new Coal Remining Subcategory (Subpart G) under the existing regulations for the Coal Mining Point Source Category (January 23, 2002; 67 FR 3370). New Subpart G applies to coal remining operations, which are defined at 40 CFR 434.70(a) as coal mining operations at sites on which coal mining was previously conducted and where the sites have been abandoned or the performance bonds have been forfeited. Since the additional language incorporates water quality exemptions authorized under the Clean Water Act, we find that the addition of the proposed language does not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

35. CSR 38–2–24.4 concerns bond release requirements for remining operations. This provision is amended by adding the following language at the end of the first sentence: ''and the terms and conditions set forth in the NPDES [National Pollutant Discharge Elimination System] Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR part 434 as amended.'' The new revision provides that bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR part 434 as amended. The proposed new language is intended to establish effluent limitations guidelines and new source performance standards for coal remining operations that are authorized under section 301(p) of the Clean Water Act, and at subpart G of the Federal regulations at 40 CFR part 434 (see Finding 34 above for more information). For the same reasons as those set forth in Finding 34, above, we find that the addition of the proposed language does not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations and can be approved.

IV. Summary and Disposition of Comments

Public Comments

No public comments were received in response to our requests for comments from the public on the proposed amendments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, on April 2 and 4, 2003, we requested comments on the amendments from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record Number WV–1356 and 1357). On June 4, 2003, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA),

responded (Administrative Record Number WV–1362) and stated that it has no comments on the changes in House Bills 2881 and 2882. MSHA stated that House Bill 2603 lacks the word ''hour'' on page 10, line one, at CSR 38–2–5.6.b, concerning storm water runoff. MSHA stated that in referring to the storm event, the statement ''one (1) year, twenty-four (24) storm event'' should read ''one (1) year, twenty-four hour storm event''. We acknowledged that the word ''hour'' is missing in Finding 12, above, and approved the provision with the understanding that the inadvertent omission would be corrected at a future date. MSHA had the following comments concerning the amendments to the regulations at CSR 38–2.

Section 3.7.d, concerning disposal of excess spoil. MSHA stated that is has no counterparts to these regulations that require a survey of the watershed to identify all man-made structures and residents and to determine the potential storm runoff impacts, and that require that the accuracy of the survey be verified by field work. As noted in Finding 8, above, we determined that there are no Federal counterparts to the provision, but that it is consistent with the Federal permit application requirement at 30 CFR 780.35 concerning the disposal of excess spoil and can be approved.

MSHA identified the proposed amendments at CSR 38–2–5.4.b.4, 5.6, 22.4.g.3.a, and 22.4.i.g [i], but did not provide any comments on those changes.

MSHA also provided comments on the changes to CSR 38–4, Coal Related Dam Safety Rule. As we noted above in Section III, in order to expedite our review of the State's proposed provisions that concern the recommendations of West Virginia's 2002 Flood Study, we separated all except one of the amendments relating to CSR 38–4, Coal Related Dam Safety Rule from this amendment. We will address the proposed amendments to CSR 38–4 and MSHA's comments relating to the proposed amendments to CSR 38–4, in a separate **Federal Register** notice at a later date.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On April 1, 2003, we asked for concurrence and comments on the amendment (Administrative Record Number WV–1355).

The EPA responded by letter dated June 13, 2003, (Administrative Record Number WV–1363).

The EPA stated that it reviewed the proposed revisions and has concerns about the requirement of erosion protection zones (EPZs) associated with single-lift valley fills at CSR 38–2–14.14.g.1 (Durable Rock Fills).

EPZ Purpose—The EPA stated that it is EPA's understanding that an EPZ is a buffer zone between the toe of a single lift valley fill and its downstream sedimentation pond. It consists of a wide and low fill, revegetated to dissipate runoff energy from the valley fill face and prevent pond overloading during severe storm periods. The EPA stated that a single lift fill is particularly subject to erosion, since it is constructed in a downstream direction toward the pond with no reclamation or revegetation of the fill face until completion of mining.

EPA's Concern—The EPA stated that it is concerned that EPZs may result in permanent stream fills after completion of mining. According to CSR 38–2–14.14.g.2.A.1, the EPA stated, a 250-foot long EPZ would be required for a 500-foot high valley fill, which, EPA stated, is not unusual in southern West Virginia. Although Section 14.14.g.2.A.6 requires EPZ removal, regrading, and revegetating after mining, EPA stated, it does not appear to include the removal of the stream fill associated with the EPZ or reconstruction of the stream channel. An alternative valley fill design, which appears more environmentally acceptable, EPA stated, is also indicated in Section 14.14.g.1 and further described in Section 14.14.g.3. The EPA stated that this involves starting valley fill construction from the toe and proceeding upstream in multiple lifts (layers) of 100 feet or less in thickness. The EPA stated that the face of each lift would be reclaimed and revegetated before starting the next lift. The toe of the first lift would be at the sedimentation pond, the EPA stated, and an EPZ would not be necessary due to better erosion control features.

Conditional Concurrence—The EPA stated that it concurs with the proposed revisions under the condition that a requirement be included to remove stream fills associated with EPZs after mining and reconstruct the stream channels. The EPA stated that it should also be noted that stream filling during EPZ construction requires authorization under Section 404 of the Clean Water Act, administered by the U.S. Army Corps of Engineers. Considering the high erosion potential of single-lift valley fills, the EPA stated, they (EPA) recommend that the single lift method be replaced by the more environmentally favorable approach of starting at the toe and proceeding upwards in multiple lifts. The EPA stated that it will likely make this recommendation for any proposed single lift fill coming before it for Section 404 review.

In response to EPA's conditional concurrence, and as we noted above in Finding 19, at CSR 38–2–14.14.g.2.A.6, we are not approving the words ''[u]nless otherwise approved in the reclamation plan'' because leaving an EPZ in place would be inconsistent with EPA's conditional concurrence to remove stream fills associated with EPZs and to reconstruct the stream channels after mining. In addition, we are approving CSR 38–2–14.14.g.2.A.6 only to the extent that following mining, all stream fills associated with EPZs will be removed and the stream channels shall be reconstructed.

The EPA also provided the following comments in support of specific amendments:

1. CSR 38–2–5.6.a.3 (Storm Water Runoff)—The EPA stated that this section requires that mining cause no net increase in peak runoff as compared to pre-mining conditions. The EPA stated that this is an important requirement for preventing mining operations from causing or increasing local flooding conditions. We concur with EPA's comment.

2. CSR 38–2–9.1.a (Revegetation)—The EPA stated that this section requires maximization of reforestation opportunities during mining reclamation. The EPA stated that it is a very beneficial approach to return land to its original forested state, unless there are other specific post-mining land uses. We concur with EPA's comment.

3. CSR 38–2–24.3 and 24.4 (Remining)—The EPA stated that these sections reference EPA's remining effluent guideline regulations promulgated in 2002 and listed in 40 CFR part 434, as amended. The EPA stated that they implement the Clean Water Act statute regarding remining, section 301(p), passed in 1987. The EPA stated that it considers remining to be an important tool for improving water quality and reclaiming scarred land associated with abandoned mines. The EPA stated that it supports providing of incentives to companies for remining salvageable coal from abandoned mines while making these environmental improvements with no cost to the public. The EPA stated that it is planning on holding workshops on implementation of the 2002 remining

regulations during the summer of 2003. We concur with EPA's comments concerning CSR 38–2–24.3 and 24.4.

V. OSM's Decision

Based on the above findings, and except as noted below, we approve the amendment sent to us by West Virginia on March 18, 2003. In addition, the following required program amendments are satisfied and can be removed at 30 CFR 948.16(nnn), (ooo), and (qqqq).

The amendments to CSR 38–2–14.5.h (Finding 17) partially satisfy the required program amendment at 30 CFR 948.16(sss). Therefore, we will revise the required program amendment at 30 CFR 948.16(sss) to require that, if the water supply is not needed for the existing or postmining land use, such waiver can only be approved where it is demonstrated that a suitable alternative water source is available and could feasibly be developed.

At CSR 38–2–14.14.g.2.A.6 (Finding 19), we are not approving the words ''[u]nless otherwise approved in the reclamation plan'' because leaving an EPZ in place would be inconsistent with EPA's conditional concurrence to remove stream fills associated with EPZs and to reconstruct the stream channels after mining. We are approving CSR 38–2–14.14.g.2.A.6 only to the extent that following mining, all stream fills associated with EPZs will be removed and the stream channels shall be reconstructed.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948, which codify decisions concerning the West Virginia program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This final rule applies only to the West Virginia program and therefore does not affect tribal programs.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is: (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not

have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 20, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR Part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

■ 1. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 948.12 is amended by adding new paragraph (g) to read as follows:

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(g) We are not approving the following provision in the proposed program amendment submitted on March 18, 2003: At CSR 38–2–14.14.g.2.A.6, the words ''Unless otherwise approved in the reclamation plan.''

■ 3. Section 948.15 is amended in the table by adding a new entry in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission dates	Date of publication of final rule	Citation/description
		W. Va. Code 22–3–23(a)-(h), 23(c)(1)(C), (c)(2)(C); 22B–1–7, 7(d), 7(h).
*	*	* * * * **
March 18, 2003	July 7, 2003	CSR 38–2–3.2.c, 3.7.d, 3.20 3.22.f.5.A, A.1, and A.2, 5.4.b.4, 5.4.b.11, 5.6, 8.2.e, 9.1.a, 9.3.d, 9.3.f, 10.2.a.4, 10.3.a.1, 10.4.c.1, 10.6.b.2, b.7.A, b.7.B, b.8, 14.5.h, 14.14.g.1, g.2 (partial approval; also, approved only to the extent that after removal of erosion protection zones, the stream channel will be restored), and g.3, 14.15.a.2, c, and g, 17.1, 20.6.a, c, and d, e, f, and j, 22.4.g.3.A and i.6, 24.2.a, 24.3, and 24.4. CSR 38–4–25.14.

948.16 [Amended]

■ 4. Section 948.16 is amended by removing and reserving paragraphs (nnn), (ooo) and (qqqq), and revising paragraph (sss) to read as follows:

* * * * *

(sss) By September 5, 2003, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a time table for adoption to amend CSR 38–2–14.5.h, or otherwise amend the West Virginia program, to require that, if the water supply is not needed for the existing or postmining land use, such waiver can only be approved where it is demonstrated that a suitable alternative water source is available and could feasibly be developed.

* * * * *

[FR Doc. 03–17080 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD01–03–051]

Special Local Regulation: City of Stamford Fireworks, Stamford, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: This notice puts into effect the permanent regulations for the annual City of Stamford, CT fireworks. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the hazards presented by a fireworks display to the maritime community, thus providing for the safety of life and property on the affected navigable waters.

DATES: The regulations in 33 CFR 100.114 (7.8) are effective from 8 p.m. on July 3, 2003 through 10 p.m. on July 5, 2003. This rule will be enforced on July 3, 2003 from 8 p.m. through 10 p.m. If the fireworks display is cancelled due to weather, this rule will be enforced on July 5, 2003 from 8 p.m. through 10 p.m.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Nagle, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the permanent special local regulation governing the Stamford Fireworks, Stamford, CT. A portion of Westcott Cove, Stamford, CT will be closed during the effective period to all vessel traffic, except the fireworks barge and local, state or Coast Guard patrol craft. The regulated area is that area of Westcott Cove in a 500-yard radius of the fireworks launch platform located at approximate position 41°02′01″ N, 73°30′3″ W. All coordinates are North American Datum 1983. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.114.

Dated: June 10, 2003.

John L. Grenier,

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

[FR Doc. 03–16968 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–228]

RIN 1625–AA00

Safety Zone; Lake Huron, Harrisville, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Harrisville Fireworks on July 5, 2003. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake Huron.

DATES: This temporary final rule is effective from 8 p.m. until 11 p.m. on July 5, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–228] and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave. Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U. S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave. Detroit, MI 48207. The telephone number is (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

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

The safety zone will encompass all waters surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 44°39′70″ N, 083°17′20″ W (off of the DNR boat launch). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to Mariners.

Small Entities

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

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

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

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 8 p.m. until 11 p.m. on the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, we will issue maritime advisories widely available to users of Lake Huron by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES.**) Small businesses may send comments on the actions of Federal employees

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

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

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

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–228 is added to read as follows:

§ 165.T09–228 Safety Zone; Lake Huron, Harrisville, MI.

(a) *Location.* The safety zone will encompass all waters of Lake Huron surrounding the fireworks launch platform bounded by the arc of a circle with a 300-yard radius with its center in approximate position 44°39′70″ N, 083°17′20″ W (off of the DNR boat launch). The geographic coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective time and date.* This section is effective from 8 p.m. (local time) until 11 p.m. (local time) on July 5, 2003.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

Dated: June 20, 2003.

P.G. Gerrity,

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

[FR Doc. 03–16970 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

CGD09–03–229

RIN 1625–AA00

Safety Zone; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Bay City Fireworks Festival in Bay City, MI. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of the Saginaw River.

DATES: This temporary final rule is effective from 7 p.m. on July 3 until 11 p.m. on July 5, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–229] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon

Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at telephone number (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

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

The safety zone will encompass all waters of the Saginaw River surrounding two fireworks launch platforms bounded by the arc of a circle with a 300-yard radius with each center in approximate positions 43°35′55″ N, 083°53′40″ W (off Veterans Park) and 43°35′55″ N, 083°53′30 W″ (off Wenonah Park). The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 7 p.m. until 11 p.m. on the days of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the Saginaw River by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**.)

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

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–229 is added to read as follows:

§ 165.T09–229 Safety Zone; Saginaw River, Bay City, MI.

(a) *Location.* The safety zone encompasses all waters of the Saginaw River surrounding two fireworks launch platforms bounded by the arc of a circle with a 300-yard radius with each center in approximate position 43°35′55″ N, 083°53′40″ W (off Veteran's Park) and 43°35′55″ N, 083°53′30″ W (off Wenonah Park)(NAD 83).

(b) Enforcement Periods. This section is effective from 7 p.m. on July 3 until 11 p.m. on July 5, 2003. This section will be enforced from 7 p.m. until 11 p.m. on July 3; during this same time on July 4; and again during this time on July 5, 2003.

(c) *Regulations.* In accordance with the general regulations in section 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit, or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16. Section 165.23 also contains other general requirements.

Dated: June 20, 2003.

P.G. Gerrity,

Commander, Coast Guard, Captain of the Port, Detroit.

[FR Doc. 03–16971 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

CGD01–03–023

RIN 1625–AA00

Safety Zone; Marblehead Fourth of July Fireworks, Marblehead, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Marblehead Fourth of July Fireworks on July 4, 2003, in Marblehead, Massachusetts. The safety zone temporarily closes all waters in the vicinity of the Marblehead Causeway in a 400-yard radius of the fireworks barge located at position 42°29′11″ N, 70°51′01″ W. The safety zone is necessary to protect the life and property of the maritime public from the hazards posed by a fireworks display. The safety zone will prohibit entry into or movement within this portion of Marblehead Harbor during its effective period.

DATES: This rule is effective from 8 p.m. until 10:30 p.m. on July 4, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Any delay encountered in this rule's effective date would be contrary to public interest since the safety zone is needed to prevent traffic from transiting a portion of Marblehead Harbor, Massachusetts, during the fireworks event and to provide for the safety of life on navigable waters. Additionally, the rule should have a negligible impact on vessel transits due to the fact that vessels will only be limited from the

area for 2 and one half hours, vessels will only be prohibited from entering the Southern fifth of the Harbor, and vessels can still transit in other areas in the majority of Marblehead Harbor and Massachusetts Bay during the event.

Background and Purpose

The Marblehead Fireworks Committee is holding a fireworks display to celebrate the July 4th holiday. This regulation establishes a safety zone in the vicinity of the Marblehead Causeway within a 400-yard radius of the fireworks barge located at position 42°29′11″ N, 70°51′01″ W. The safety zone is in effect from 8 p.m. until 10:30 p.m. on July 4, 2003.

This safety zone is necessary to protect the life and property of the maritime public from the dangers posed by this event. It will protect the public by prohibiting entry into or movement within this portion of Marblehead Harbor where an explosion and/or falling debris hazard may exist.

Discussion of Rule

The safety zone is in effect from 8 p.m. until 10:30 p.m. July 4, 2003. Marine traffic may transit safely outside of the safety zone in the majority of Marblehead Harbor during the event, only the Southern fifth is encompassed by this zone.

Because of the limited time and because the zone leaves the majority of Marblehead Harbor open for navigation, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule will prevent traffic from transiting a portion of Marblehead Harbor during the effective period, the effects of this rule will not be significant for several reasons: vessels will only be excluded from the area of the safety zone for 2 and one half hours, vessels will be able to operate in the majority of the Harbor during this time, and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the Marblehead Causeway on July 4, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons described under the Regulatory Evaluation section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–023 to read as follows:

§ 165.T01–023 Safety Zone; Marblehead Fourth of July Fireworks—Marblehead, Massachusetts

(a) *Location.* The following area is a safety zone:

All waters in the vicinity of the Marblehead Causeway in a 400-yard radius of the fireworks barge located at position 42°29′11″ N, 70°51′01″ W.

(b) *Effective date.* This section is effective from 8 p.m. until 10:30 p.m. on July 4, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: June 9, 2003.

B.M. Salerno,

Captain, Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 03–16967 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–069]

RIN 1625–AA00

Safety Zone: Tribute to the Troops, 4th of July Fireworks, Salem, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Tribute to the Troops/Fourth of July Fireworks on July 4, 2003, in Salem Harbor, Salem, Massachusetts, temporarily closing all waters around the center of Derby Wharf in Salem Harbor within a 400-yard radius of the fireworks launch. The safety zone is necessary to protect the life and property of the maritime public from the hazards posed by a fireworks display. Entry into or movement within this portion of Salem Harbor during the enforcement period is prohibited unless authorized by the Captain of the Port Boston, Massachusetts.

DATES: This rule is effective from 8 p.m. until 10 p.m. on July 4, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. The temporary safety zone is of very short duration and should have minimal impact on navigation. Accordingly, publishing an NPRM and delaying its effective date would be unnecessary and contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Salem Harbor, Massachusetts during the fireworks event and to provide for the safety of life on navigable waters. Additionally, the zone should have a negligible impact on vessel transits due to the fact that vessels can still transit in the majority of Salem Harbor during the event.

Background and Purpose

The City of Salem is holding a fireworks display to honor the nations military troops on July 4, 2003. This regulation establishes a safety zone in Salem Harbor around the center of Derby Wharf within a 400-yard radius of the fireworks launch site located at 42°31′04.5″ N, 70°53′05″ W. The safety zone will be enforced from 8 p.m. until 10 p.m. on July 4, 2003.

This safety zone is necessary to protect the life and property of the maritime public from the dangers posed by this event. It will protect the public by prohibiting entry into or movement within this portion of Salem Harbor. No vessel may enter the temporary safety zone without permission of the Captain of the Port Boston, Massachusetts.

Discussion of Rule

This action is intended to restrict vessel traffic in a portion of Salem Harbor in the vicinity of Derby Wharf to provide for the protection of life and property of the maritime public. The safety zone will be enforced from 8 p.m. until 10 p.m. on July 4, 2003. Marine traffic may transit safely outside of the safety zone in the majority of Salem Harbor during the event.

Because of its limited time duration and because the temporary safety zone leaves the majority of Salem Harbor open for navigation, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS)(44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule will prevent traffic from transiting a portion of Salem Harbor during the effective periods, the effects of this rule will not be significant for several reasons: Vessels will only be excluded from the area of the temporary safety zone for 2 hours, vessels will be able to operate in the majority of Salem Harbor during this time, and advance notifications will be made to the local maritime community via marine information broadcasts and Local Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of Derby Wharf in Salem Harbor on July 4, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons described under the Regulatory Evaluation section.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

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

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal government having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 604–1, 604–6, 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. From 8 p.m. through 10 p.m. on July 4, 2003, add § 165.T01–069 to read as follows:

§ 165.T01–069 Safety Zone: Tribute to the Troops, 4th of July Fireworks, Salem, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of Salem Harbor in a 400-yard radius of the fireworks launch site located on Derby Wharf located at position 42°31′04.5″ N, 70°53′05″ W.

(b) *Enforcement period.* This section will be enforced from 8 p.m. until 10 p.m. on July 4, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: June 18, 2003.

Brian M. Salerno,

Captain, Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 03–16966 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–050]

RIN 1625–AA00

Safety Zone; Boston 4th of July Fireworks—Charles River, Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Boston 4th of July Fireworks on July 4, 2003 in Boston, MA temporarily closing all waters on the Charles River within a four hundred (400) yard radius of the fireworks launch site. The safety zone is necessary to protect the life and property of the maritime public from the hazards posed by a fireworks display. The safety zone will prohibit entry into or movement within this portion of the Charles River during its effective period.

DATES: This rule is effective from 7 p.m. July 4, 2003 until 11:30 p.m. on July 4, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Daniel Dugery, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Information about this event was not provided to the Coast Guard until May 20, 2003, making it impossible to draft or publish an NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to prevent traffic from transiting and provide for the safety of life on navigable waters of the portion of the Charles River, Boston, Massachusetts, affected by the fireworks display. The zone should have minimal negative impact on vessel use of the

Charles River because vessels will only be excluded from the area of the safety zone for 4 and one half hours and will be able to operate in other areas of the river during this time.

Background and Purpose

Boston's Fourth of July is holding a fireworks display to celebrate the July 4th holiday. This rule establishes a safety zone on the waters of the Charles River within a four hundred (400) yard radius around the fireworks launch site located midway between the Longfellow and Massachusetts Avenue Bridges, specifically at 42°21.28′ N, 071°05.00′ W. All coordinates are North American Datum 1983.

This safety zone is necessary to protect the life and property of the maritime public from the dangers posed by this event. It will protect the public by prohibiting entry into or movement within this portion of the Charles River.

Discussion of Rule

The safety zone is in effect from 7 p.m. until 11:30 p.m. July 4, 2003. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the entire river except for the portion delineated by this rule.

Due to the size of the river and the size of this safety zone, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local media, local notice to mariners and marine information broadcasts.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this rule prevents vessel traffic from transiting into a portion of the Charles River during this event, the effect of this rule will not be significant for several reasons: Vessels will only be excluded from the area of the safety zone for 4 and one half hours; although vessels will not be able to transit up and down the river in the vicinity of the zone, they will be able to operate in other areas of the river during this time; and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Charles River from 7 p.m. until 11:30 p.m. July 4, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons described under the Regulatory Evaluation section.

Collection of Information

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

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–050 to read as follows:

§ 165.T01–050 Safety Zone; Boston 4th of July Fireworks, Boston, Massachusetts.

(a) *Location.* The following area is a safety zone:

All waters of the Charles River within a four hundred (400) yard radius of the fireworks launch site located midway between the Longfellow Bridge and the Massachusetts Avenue Bridge, Boston, MA, specifically at 42°21.28′ N, 071°05.00′ W. All coordinates are North American Datum 1983.

(b) *Effective date.* This section is effective from 7 p.m. until 11:30 p.m. on July 4, 2003.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP) Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: June 10, 2003.

Brian M. Salerno,

Captain, Coast Guard, Captain of the Port Boston, Massachusetts.

[FR Doc. 03–16965 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Charleston–03–105]

RIN 1625–AA00

Security Zones; Charleston Harbor, Cooper River, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is extending the temporary fixed security zones for the waters under the Highway 17 bridges over Charleston Harbor and the Don Holt I–526 Bridge over the Cooper River. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Vessels are prohibited from anchoring, mooring, or loitering within these zones, unless specifically authorized by the Captain of the Port, Charleston, South Carolina or his designated representative.

DATES: This regulation is effective from 12 midnight on July 15, 2003, until 11:59 p.m. January 15, 2004. Comments and related material must reach the Coast Guard on or before September 5, 2003.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Charleston, 196 Tradd Street, Charleston, South Carolina 29401. Coast Guard Marine Safety Office Charleston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Charleston–03–105], will become part of this docket and will be available for inspection or copying at the Coast Guard Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Kevin D. Floyd, Coast Guard Marine Safety Office Charleston, at (843) 747–7411

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rule making (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM). Publishing a NPRM and delaying the effective date of this rule would be contrary to national security since immediate action is necessary to protect the public, ports and waterways of the United States.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Based on the September 11, 2001, terrorist attack on the World Trade Center in New York and the Pentagon in Arlington, VA, there is an increased risk that subversive terrorist activity could be launched by vessels or persons in close proximity to the Port of Charleston, S.C., against bridges within the security zones continued by this rule. If a bridge were damaged or destroyed, the Port of Charleston would be isolated from access to the sea, crippling the local economy and negatively impacting national security. These temporary security zones are necessary to protect the safety of life and property on the navigable waters, prevent potential terrorist threats aimed at the bridges crossing the main shipping channels in the Port of Charleston, SC and to ensure the continued unrestricted access to the sea from the Port.

A similar temporary rule was issued on October 18, 2001 creating temporary security zones around these bridges that rule expired on January 15, 2002 (*see* COTP Charleston 01–124 in Quarterly Report of temporary rules, 67 FR 9194, February 28, 2002). Those security zones were extended by another temporary rule published on February 28, 2002 (67 FR 9201) that expired on June 15, 2002. Those security zones were again extended by a temporary rule published in the **Federal Register** on July 3, 2002 (67 FR 44555) which expired on December 16, 2002. These security zones were again extended by a temporary rule published in the **Federal Register** on December 16, 2002 (67 FR 76991) and will expire on July 15, 2003.

Regulatory Evaluation

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

regulating policies and procedures of DHS is unnecessary. The limited geographic area impacted by the security zones will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because the limited geographic area encompassed by the security zones will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port of Charleston.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that preparation of an Environmental Impact Statement is not necessary. A ''Environmental Assessment'' and a ''Finding of No Significant Impact'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

A new temporary § 165.T–07–105 is added to read as follows:

§ 165.T–07–105 Security Zones; Charleston Harbor, Cooper River, South Carolina

(a) *Regulated area.* (1) A temporary fixed security zone is established for the waters around the Highway 17 bridges, to encompass all waters of the Cooper River within a line connecting the following points: 32°48.23′ N, 079°55.3′ W; 32°48.1′ N, 079°54.35′ W; 32°48.34′

N, 079°55.25′ W; 32°48.2′ N, 079°54.35′ W.

(2) Another temporary fixed security zone is established for the waters around the Interstate 526 Bridge spans (Don Holt Bridge) in Charleston Harbor and on the Cooper River and will encompass all waters within a line connecting the following points: 32°53.49′ N, 079°58.05′ W; 32°53.42′ N, 079°57.48′ W; 32°53.53′ N, 079°58.05′ W; 32°53.47′ N, 079°57.47′ W.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, vessels are allowed to transit through these zones but are prohibited from mooring, anchoring, or loitering within these zones unless specifically authorized by the Captain of the Port.

(c) *Authority.* In addition to 33 U.S.C. 1321, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section is effective from 12 midnight on July 15, 2003, until 11:59 p.m. January 15, 2004.

Dated: June 16, 2003.

Gary W. Merrick,

Commander, Coast Guard, Captain of the Port.

[FR Doc. 03–16969 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0154; FRL–7310–1]

Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 Proteins and the Genetic Material Necessary for their Production in Corn; Temporary Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn on corn when applied/used as a plant-incorporated protectant. Mycogen Seeds c/o Dow AgroSciences LLC, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting the temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn. The temporary tolerance exemption will expire on April 30, 2006.

DATES: This regulation is effective July 7, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0154, must be received by EPA on or before September 5, 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 VIII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0154. 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 March 7, 2003 (68 FR 11100) (FRL–7285–8), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 0G6112) by Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This notice included a summary of the petition prepared by the petitioner Mycogen Seeds c/o Dow AgroSciences LLC. The docket, OPP–2002–0350, cited in the notice contained the petition. However, the administrative pesticide petition number cited in the notice (PP 0G6112) was incorrect. The correct number is PP 1G6279. There was one comment received in response to the notice of filing by the Center for Science in the Public Interest (CSPI).

Summary of Comment

The major focus of the comments from CSPI is on the results of tests done to establish the sensitivity of the

Cry34Ab1 protein to pepsin degradation. CSPI contests the interpretation of the results provided by Dow AgroSciences that indicate the Cry34Ab1 degrades under the influence of pepsin. CSPI asserts that EPA cannot make a safety determination in light of these results and international consensus on how to address allergenicity as stated in the Food and Agricultural Organization/World Health Organization (FAO/WHO) expert consultation. Specifically, CSPI claims use of a less sensitive protein detection method, a pH of 1.2 instead of 2.0 for the pepsin buffer solution and a low concentration of the Cry34Ab1 protein in the assays were all utilized to achieve the results. CSPI suggests that all these features combine to artificially skew the results of the pepsin assay to show that Cry 34Ab1 is readily broken down by pepsin. CSPI suggests that the Cry34Ab1 protein is stable to gastric fluid breakdown since it is visible on Coomassie blue stained gels at 7 to 10 minutes of pepsin incubation. CSPI also claims that the initial Dow AgroScience data using a more sensitive Western blot assay clearly show the protein present at the 20 to 30 minute sample and that this endpoint is scientifically agreed upon to indicate resistance to pepsin degradation. CSPI recognizes that the total dietary exposure to the Cry34Ab1 protein likely to occur during an experimental use permit would not be expected to induce an allergic reaction and that there is still considerable scientific controversy around the determination of potential allergenicity of a protein new to the food supply. Finally, CSPI states that a test to determine potential allergenicity is still needed and, in the interim, acceptable standards for performing the currently available tests are provided by the FAO/WHO report on Evaluation of Allergenicity of Genetically Modified Foods (Rome, 2001).

EPA Response

EPA agrees that there is still the need to develop definitive tests to assess potential allergenicity and that the currently employed tests need to follow standardized procedures. EPA also agrees that no single criterion of those currently utilized can alone be an indication of potential allergenicity. However, EPA would suggest that, while the guidance given by the 2001 FAO/WHO report is invaluable, there is still no consensus on how to implement several of the tests suggested in the FAO/WHO guidance nor any direction given as to critical endpoints for the tests suggested. This lack of consensus was confirmed by a CODEX ad hoc working group on allergenicity which met in Vancouver, Canada in September 2001, to consider the advice of the FAO/WHO expert consultation report from Rome 2001. This CODEX group found that, without development and implementation of the new tests suggested by FAO/WHO expert consultation, the current weight of evidence approach provides essentially the same information for judging allergenicity as that suggested by the 2001 FAO/WHO report. This advice has been incorporated into the latest version of the CODEX food safety assessment for genetically engineered foods. (CODEX, ftp://ftp.fao.org/codex/alinorm03/Al03__34e.pdf)

The current criteria used by EPA to judge allergenicity include amino acid sequence similarity analyses, stability to heat, and enzymatic degradation. The Cry34Ab1 protein does not share significant amino acid similarity with known allergens either on a whole sequence level or on the eight amino acid stepwise comparisons, nor does the Cry34Ab1 protein appear to be stable to temperatures above 90 °C. The initial data reported from the company indicated that one of the two proteins, Cry34Ab1, was moderately resistant to the action of pepsin by still being detectable on an SDS-PAGE western blot at 20–30 minutes. EPA questioned the results found in the initial submission on pepsin degradation and requested more information.

In the absence of a definitive endpoint for determining the pepsin resistance of a given protein, the initial results reported by Dow were not conclusive. The 2001 Rome FAO/WHO expert consultation report specifically does not mention a time endpoint for pepsin degradation of a protein other than the protein or a significant sized fragment being present at the final endpoint of 60 minutes. The literature references CSPI itself provided cite a range of values for pepsin stability ranging from 8 minutes to 2 hours and demonstrate a lack of consensus on pepsin resistance. EPA would therefore disagree with CSPI that there is a scientific consensus on visible protein bands in an SDS PAGE assay at 20 to 30 minutes indicating pepsin stability.

Dow AgroScience's second submission presents results that indicate more rapid breakdown than the initial data. Dow AgroScience's approach where enzymatic degradation is expressed as a kinetic rate instead of a definitive substrate disappearance endpoint makes the results less variable since the sensitivity of the detection system does not affect the final result. This is because the pepsin activity can be expressed as a rate constant, an endpoint that is not dependent on the sensitivity of the detection system, is substrate concentration independent and is the classical method used by protein chemists to determine enzyme activity or in this case substrate disappearance. While this method may not be the final iteration of the pepsin degradation assay, EPA believes that an analysis that lessens assay variability and makes the results independent of the sensitivity of the detection method is an improvement.

EPA finds that the literature references CPSI cited are diametrically opposed in their view of the usefulness of the pepsin degradation assay for prediction of allergenicity (Ref. 1). The Astwood et al. paper shows that, while lowering the pepsin concentration can lead to the appearance of fragments in an otherwise rapidly degraded protein, the pepsin assay is a good predictor of allergenicity (Ref. 1). The Fu et al. paper indicates that both allergens and non-allergens can be stable to pepsin activity so the assay is not predictive (Ref. 2). Both papers emphasize that protein doses, pepsin concentrations, and assay conditions should be equivalent when comparing proteins. Neither paper suggests a definitive timepoint that could be interpreted as indicating protein stability to pepsin. The Fu et al. paper in fact suggests that allergens and non-allergens can both be either resistant to or degraded by pepsin. The final conclusion in the Fu paper is that the pepsin sensitivity assay alone has no predictive value for allergenicity. EPA does not agree with this position but does agree that pepsin stability alone is not a sole criterion to be used for an allergenicity assessment.

EPA agrees with CSPI that the tests used to determine potential allergenicity need standardization and supports efforts in that area. EPA believes that there is sufficient data available, considering all information on the Cry34Ab1 protein, to make a finding that there is a reasonable certainty that no harm will result from the aggregate exposure to the Cry34Ab1 and Cry35 Ab1 proteins as expressed in corn.

The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of the plant-incorporated protectants *Bacillus thuringiensis* Cry34Ab1/Cry35Ab1 proteins and the genetic material necessary for their production in corn in or on corn. The Mycogen/Dow AgroSciences and Pioneer Hi-Bred experimental use permits associated with the petition are 68467–EUP–3, 68467–EUP–5, 68467–EUP–T(7), 68467–

EUP–I(8), 29964–EUP–1, 29964–EUP–3, 29964–EUP–U(4), and 29964–EUP–L(5)

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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. . . .'' Additionally, section 408(b)(2)(D) of the FFDCA requires that 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 performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

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 and considered its validity, completeness and reliability and the relationship of this information 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.

Data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to pure Cry34Ab1/Cry35Ab1 proteins. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. This is similar to the Agency position regarding toxicity and the requirement of residue data for microbial pesticides. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

The acute oral toxicity data submitted support the prediction that the Cry34Ab1 and Cry35Ab1 proteins would be non-toxic to humans. The test substance was administered to five female and five male mice (5,000 milligrams/kilogram (mg/kg) body weight)) in a 1:4.6 mixture of the two proteins, 14 kDa and 44 kDa. A single dose gavage (25 milliliter/kilogram (mL/kg)) delivered as a 20% mixture in 0.5% methycellulose. All animals survived the 2–week study. One female mouse exhibited protruding or bulging eyes on days 6 and 7, but this resolved thereafter. This observation was not attributed to the treatment as it was an isolated observation (i.e., no other animals exhibited this). No other clinical signs were noted for any animals during the study. An initial weight loss was observed in two mice at test days 1 and 2, but both gained weight for the remainder of the study. All other animals gained weight throughout the study. No gross treatment related observations were recorded during the study as represented by gross pathologic observations. An acute oral LD_{50} was calculated for this study based upon a dosage of a 1:4.6 ratio mixture of Cry34Ab1 (54% pure) and Cry35Ab1 (37% pure) proteins at greater than 5,000 mg/kg, and greater than 2,000 mg/kg for an equimolar mixture (1:3) of the pure proteins.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 3). Therefore, since no acute effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the Cry34Ab1 and Cry35Ab1 proteins are not considered toxic.

Since Cry34Ab1 and Cry35Ab1 are proteins, allergenic sensitivities were considered. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by heat, acid, and proteases, may be glycosylated and present at high concentrations in the food. Data have been submitted that demonstrate that the Cry34Ab1 and Cry35Ab1 proteins are rapidly degraded by gastric fluid *in vitro* and are non-glycosylated. Two *in vitro* digestibility studies were conducted to determine the lability of the Cry34Ab1 and Cry35Ab1 proteins in an acid environment containing pepsin. In the first *in vitro* digestibility study, 1 microgram (μg) of the 14 kDa protein (Cry34Ab1) were loaded and was visible on the SDS-PAGE gel up to the 15 minute sample point and on the Western blot, which has greater sensitivity, up to the 20 minute time point. Two micrograms of the 44 kDa protein (Cry35Ab1) was loaded on the SDS gel. A single band was observed on the 44 kDa SDS-PAGE at approximately 15 to 16 kDa. Western blot bands were observed at approximately 42 kDa and 14 kDa. These bands were only observed at the one minute time point, but not afterwards. It was concluded that both proteins are susceptible to degradation in the simulated gastric environment, but that the Cry35Ab1 was more rapidly degraded. In the second *in vitro* digestibility study, the digestibility of Cry34Ab1 was further investigated and enzyme kinetics were used in evaluating the data. In this study, 0.36 μg of the protein was loaded in the SDS gel. The protein appears to have approached full degradation by 7.5 minutes. Volumes remaining at the 10 and 15 minute time points were excluded from the calculations since they were below background levels. Using this first order decay model, the DT50 and DT90 for this protein in the simulated gastric fluid GF were estimated to be 1.9 and 6.2 minutes, respectively. The Cry34Ab1 protein is rapidly degraded in the simulated gastric fluid using this assay and detection methodology. The conditions of the assay are biologically appropriate in temperature, pH, and chemical makeup of the digestive solution. The first order decay rate kinetics accurately portray the digestion of Cry34Ab1.

Submitted studies regarding heat stability of the Cry34Ab1 and Cry35Ab1 proteins demonstrate that these proteins are inactivated at ≤90 °C and ≤60 °C, respectively. A comparison of amino acid sequences of known allergens uncovered no evidence of any homology with Cry34Ab1 or Cry35Ab1, even at the level of 8 contiguous amino acids residues. The potential for the Cry34Ab1 and Cry35Ab1 proteins to be food allergens is minimal.

Regarding toxicity to the immune system, the acute oral toxicity data submitted support the prediction that the Cry34Ab1 and Cry35Ab1 proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 3). Therefore, since no effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the

Cry34Ab1 and Cry35Ab1 proteins are not considered toxic.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Dietary Exposure

Exposure via the skin or inhalation is not likely since the plant-incorporated protectant is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However a lack of mammalian toxicity and the digestibility of the plant-incorporated protectants have been demonstrated. The use sites for the Cry34Ab1 and Cry35Ab1 proteins are all agricultural for control of insects. Therefore, exposure via residential or lawn use to infants and children is not expected. Even if negligible exposure should occur, the Agency concludes that such exposure would present no risk due to the lack of toxicity demonstrated for the Cry34Ab1 and Cry35Ab1 proteins.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to these plant-incorporated protectants, we conclude that there are no cumulative effects for the Cry34Ab1 and Cry35Ab1 proteins.

VI. Determination of Safety for U.S. Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the Cry34Ab1 and Cry35Ab1 proteins include the characterization of the expressed Cry34Ab1 and Cry35Ab1 proteins in corn, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the Cry34Ab1 and Cry35Ab1 test materials derived from microbial cultures were biochemically and functionally similar to the protein produced by the plant-incorporated protectant ingredients in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted support the prediction that the Cry34Ab1 and Cry35Ab1 proteins would be non-toxic to humans. When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 3). Since no treatment-related adverse effects were shown to be caused by Cry34Ab1 and Cry35Ab1 proteins, even at relatively high dose levels (greater than 5,000 mg/kg based upon a dosage of a 1:4.6 ratio mixture of (54% pure) Cry34Ab1 and (37% pure) Cry35Ab1 proteins and greater than 2,000 mg/kg for an equimolar mixture (1:3) of the pure proteins), the Cry34Ab1 and Cry35Ab1 proteins are not considered toxic. This is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this plant-incorporated protectant was derived. See 40 CFR 158.740(b)(2)(i). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

Although Cry34Ab1 and Cry35Ab1 expression level data were submitted, residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity. Both: (1) Available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children); and (2) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives, are generally recognized as appropriate for the use of animal experimentation data were not evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry34Ab1 and Cry35Ab1 proteins demonstrates the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-incorporated protectant active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. The genetic material (DNA, RNA) necessary for the production of Cry34Ab1 and Cry35Ab1 proteins in corn have been exempted under the blanket exemption for all nucleic acids (40 CFR 174.175).

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(B)(2)(C) also 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 database unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Cry34Ab1 and Cry35Ab1 protein and the genetic material necessary for their production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed for the plant-incorporated protectants.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredients are proteins, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of these plant-incorporated protectants at this time.

B. Analytical Method

A validated method for extraction and direct enzyme linked immunosorbent assay analysis of Cry34Ab1 in corn grain has been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exists for the plant-incorporated protectants *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn.

VIII. 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), 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–2003–0154 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 5, 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 VIII.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–2003–0154, 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).

IX. References

1. Astwood J.D., Leach, J.N. and Fuch, R.L. (1996) ''Stability of Food Allergens to Digestion *In Vitro*.'' *Nature Biotech*. 14:1269–1273.

2. Fu, T-J, Abbott, U.R., Hatzos, C. (2002) ''Digestibility of Food Allergens and Nonallergenic Proteins in Simulated Gastric Fluid and Simulated Intestinal Fluid - A Comparative Study.'' *J. Agric. Food Chem*. 50:7154–7160.

3. Sjoblad, Roy D., et al. (1992) ''Toxicological Considerations for Protein Components of Biological Pesticide Products.'' *Regulatory Toxicology and Pharmacology* 15L, 3–9.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement 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 exemption 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.

XI. 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 23, 2003.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1242 is added to subpart D to read as follows:

§ 180.1242 Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn; temporary exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn are temporarily exempted from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of field corn, sweet corn and popcorn. This temporary exemption from the requirement of a tolerance will permit the use of the food commodities in this paragraph when treated in accordance with the provisions of the experimental use permits 68467–EUP–3, 68467–EUP–5, 68467–EUP–T(7), 68467–EUP–I(8), 29964–EUP–1, 29964–EUP–3, 29964–EUP–U(4), and 29964–EUP–L(5) which may be issued and amended/extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136). This temporary exemption from the requirement of a tolerance expires and is revoked April 30, 2006. This temporary exemption from the requirement of a tolerance may be revoked at any time if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that the tolerance is not safe.

[FR Doc. 03–17105 Filed 7–3–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 03–42]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Clarification.

SUMMARY: In this document we clarify certain issues pertaining to the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (*Reconsideration Order*), regarding Unauthorized Changes of Consumers' Long Distance Carriers. In the *Reconsideration Order*, we stated that, given the proliferation of customers that are now or may soon be served by LECs that also provide interexchange services, it was necessary to require verification of long distance carrier change requests that occur when a customer initiates a call to a LEC. We clarify here that such verification by a LEC is required only when the carrier change involves the LEC or an affiliate of the LEC. In-bound customer requests to change long distance carriers, made directly to a LEC, remain exempted in cases where the LEC or its long distance affiliate is not the subject of the long distance carrier change.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson, 202–418–7039, Consumer & Governmental Affairs Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order clarifying issues in the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 94–129, FCC 03–42, released March 17, 2003 and published in the **Federal Register** on April 18, 2003 (68 FR 19152). The full text of this document is available on the Commission's website Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Synopsis of Clarifying Order

1. In this Order, we clarify certain issues pertaining to the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (*Reconsideration Order*) in the above-captioned proceeding. In the *Reconsideration Order*, we addressed issues raised in petitions for reconsideration of a series of orders implementing section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). Section 258 makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, except in accordance with such verification procedures as the Commission shall prescribe.'' Since the release of the *Reconsideration Order*, several parties have requested that the Commission clarify a portion of that order concerning the carrier change verification responsibilities of local exchange carriers (''LECs'').

2. Prior to the adoption of the *Reconsideration Order*, in the *Second Report and Order* the Commission found that all changes to a subscriber's preferred carrier, including local exchange, intraLATA toll, and interLATA toll services, must be authorized by the subscriber and verified in accordance with the Commission's procedures. In addition, the Commission found in the *Second Report and Order* that its rules concerning customer verification of preferred carrier change requests should apply to ''in-bound'' as well as ''out-bound'' calls, stating that ''it serves the public interest to offer consumers who initiate calls to carriers the same protection under the verification rules as those consumers who are contacted by carriers.'' However, the Commission at that time declined to require verification of long distance carrier changes in instances when a customer contacts a LEC directly to effect the change. The Commission noted that, under those circumstances, the LEC is not providing interexchange service to the subscriber.

3. In the *Reconsideration Order*, however, we recognized that, since the adoption of the *Second Report and Order*, ''many LECs have become (or plan to become) long distance service providers.'' We stated that, given the proliferation of customers that are now or may soon be served by LECs that also provide interexchange services, it was necessary to require verification of long distance carrier change requests that occur when a customer initiates a call to a LEC. The Commission stated that such verification was necessary in order to deter slamming and as such furthered the goals of section 258.

II. Discussion

4. BellSouth, Qwest, SBC Telecommunications, Inc. and Verizon (''Joint LECs'') seek clarification that the Commission, in the *Reconsideration Order*, ''merely intended to confirm that customer calls to the LEC to make a carrier change benefiting the LEC or, more specifically, its long distance affiliates, must be verified pursuant to existing Commission verification rules.'' The Joint LECs ask the Commission to clarify that the verification rules do not apply in situations when a subscriber asks a LEC to effect a change to their presubscribed carrier, and the new carrier is neither the LEC itself nor an affiliate of the LEC.

5. As noted previously, in the *Second Report and Order*, the Commission initially excluded from the verification rules requests for long distance carrier changes by customers that contact LECs directly, because ''the LEC is not providing interexchange service to [the] subscriber.'' However, in the *Reconsideration Order*, we stated that ''[d]ue to the changes in the competitive landscape that have come to fruition since the adoption of the *Second Report and Order*, and based on our experiences therewith, we now find it necessary, as with other in-bound carrier change calls, to require verification of carrier change requests that occur when a customer initiates a call to a LEC.'' We clarify here that such verification by a LEC is required only when the carrier change involves the LEC or an affiliate of the LEC. In-bound customer requests to change long distance carriers, made directly to a LEC, remain exempted in cases where the LEC or its long distance affiliate is not the subject of the long distance carrier change. We agree with the Joint LECs that the *Reconsideration Order* requires verifications of carrier changes involving the LEC or its affiliates. This is consistent with out statement in the *Second Report and Order* that our decision to apply the verification rules to certain inbound calls was especially necessary ''as carriers begin combining services to market to consumers, such as intraLATA and interLATA toll services.''

III. Ordering Clauses

6. Pursuant to sections 1, 4(i), 258 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 258 and 303(r), this Order is adopted, and is effective as of its release on May 23, 2003.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–16845 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2037; MB Docket No. 03–88 RM–10464]

Radio Broadcasting Services; Sonora, TX.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots Channel 237C3 at Sonora, Texas, in response to a petition filed by Linda Crawford. *See* 68 FR 18179 (April 15, 2003). Channel 237C3 can be allotted at Sonora, Texas, with a site restriction 8.7 kilometers (5.4 miles) northwest of the community at coordinates 30–36–35 and 100–43–09. Although Mexican concurrence has been requested for the allotment of Channel 237C3 at Sonora, notification has not been received. Therefore, operation with the facilities specified for Sonora herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this proceeding is terminated. A filing window for channel 237C3 at Sonora will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–88, June 18, 2003, and released June 23, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 237C3 at Sonora.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–16958 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1933; MB Docket No. 03–68, RM–10564, RM–10656]

Radio Broadcasting Services; Fort Stockton and Sanderson, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Linda Crawford, allots Channel 263C to Fort Stockton, Texas, as the community's second local FM aural transmission service. *See* 68 FR 15141, March 28, 2003. Channel 263C can be allotted to Fort Stockton, in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 13.8 kilometers (8.6 miles) southeast of the community. The reference coordinates for Channel 263C at Fort Stockton are 30–50–06 North Latitude and 102–45–06 West Longitude. This document also dismissed a Petition for Rule Making filed by Katherine Pyeatt proposing the allotment of Channel 261C3 at Sanderson, Texas, as that community's first local FM aural transmission service. A filing window for Channel 263C at Fort Stockton, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 4, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–68, adopted June 18, 2003, and released June 20, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 263C at Fort Stockton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–16961 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1934; MB Docket No. 03–55, RM–10653]

Radio Broadcasting Services; Estelline, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Katherine Pyeatt, allots Channel 263C3 to Estelline, Texas, as the community's first local aural transmission service. *See* 68 FR 15140, March 28, 2003. Channel 263C3 can be

allotted to Estelline, in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 13.7 kilometers (8.5 miles) southwest of the community. The reference coordinates for Channel 263C3 at Estelline are 34–28–41 North Latitude and 100–33–42 West Longitude. A filing window for Channel 263C3 at Estelline, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 4, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–55, adopted June 18, 2003, and released June 20, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Estelline, Channel 263C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–16960 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2036; MB Docket No. 03–58; RM–10608]

Radio Broadcasting Services; Meigs and Pelham, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 222A from Pelham, Georgia, to Meigs, Georgia, and modifies the authorization for Station WQLI to specify on operation Channel 222A at Meigs in response to a petition filed by Mitchell County Television. See 68 FR 16750, April 7, 2003. The coordinates for Channel 222A at Meigs are 31–05–12 and 84–12–10. With this action, this proceeding is terminated.

DATES: Effective August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 03–85, adopted June 18, 2003, and released June 23, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Meigs, Channel 222A and by removing Pelham, Channel 222A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–16956 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2035; MM Docket No. 01–175; RM–10197]

Radio Broadcasting Services; Asheville, NC, Augusta, GA, Fletcher, NC, Old Fort, NC, and Surgoinsville, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Clear Channel Broadcasting Licenses, Inc. and Capstar TX Limited Partnership, reallots Channel 282A from Old Fort to Fletcher, North Carolina, and modifies Station WQNQ(FM)'s license accordingly. We also reallot Channel 260C from Asheville to Old Fort, North Carolina as a replacement service, and modify Station WKSF(FM)'s license accordingly. To accommodate the reallotments, we modify the reference coordinates for Station WEYE(FM), Channel 282A at Surgoinsville, Tennessee; and the reference coordinates for Station WBBQ-FM, Channel 282C, Augusta, Georgia. *See* 66 FR 42623, August 14, 2001. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Effective August 7, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–175, adopted June 18, 2003, and released June 23, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Channel 282A can be reallotted to Fletcher in compliance with the Commission's minimum distance separation requirements with a site

restriction of 12.8 kilometers (8.0 miles) north at petitioners' requested site. The coordinates for Channel 282A at Fletcher are 35–32–28 North Latitude and 82–32–32 West Longitude. The coordinates for Channel 260C at Old Fort are 35–25–32 North Latitude and 82–45–25 West Longitude. Additionally, the modified reference coordinates for Channel 282A at Surgoinsville are 36–33–11 North Latitude and 82–51–23 West Longitude; and the modified reference coordinates for Channel 282C at Augusta are 33–34–24 North Latitude and 81–54–17 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Asheville, Channel 260C, by adding Fletcher, Channel 282A, by removing Channel 282A and by adding Channel 260C at Old Fort.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–16957 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1935; MM Docket No. 02–56; RM–10391, RM–10581*]

Radio Broadcasting Services; DeRidder, DeQuincy, and Merryville, LA, and Newton, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 67 FR 16350 (April 5, 2002) this document reallots Channel 221C3 from DeRidder, Louisiana, to DeQuincy, Louisiana and provides DeQuincy with its first local aural transmission service. The coordinates for Channel 221C3 at Dequincy are 30–26–54 North Latitude and 93–26–37 West Longitude. The initial rulemaking request to reallot Channel 221C3 from DeRidder to Merryville, Louisiana, was superseded by a counterproposal to reallot Channel 221C3 from De Ridder to DeQuincy, Louisiana. A portion of that counterproposal, which proposed the allotment of Channel 224A to Newton, Texas, was rejected for failure to provide city-grade coverage of the entire town of Newton.

DATES: Effective August 4, 2003.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–56, adopted June 18, 2003, and released June 20, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863-2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding DeQuincy, Channel 221C3, and removing Channel 221C3 at DeRidder.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–16959 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 062703A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments to trip limits and the trawl rockfish conservation area boundaries; correction to trawl rockfish conservation area boundaries; request for comments.

SUMMARY: NMFS announces changes to trip limits and the trawl rockfish conservation area (RCA) for the Pacific Coast groundfish fishery. Trip limit adjustments include changes to the limited entry trawl (Dover sole, thornyhead, sablefish) (DTS) limits coastwide and the limited entry fixed gear and open access minor nearshore rockfish limits coastwide. Changes to the trawl RCA during the months of July and August will restore nearshore fishing opportunities by moving the eastern boundary of the trawl RCA into deeper waters. For the trawl ''A'' platoon, trip limit adjustments and changes to the trawl RCA will be effective July 1, 2003. Inseason adjustments to trip limits and the trawl RCA for the trawl ''B'' platoon will be effective July 16, 2003. These actions, which are authorized by the Pacific

Coast Groundfish Fishery Management Plan (FMP), will allow fisheries access to more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Changes to management measures are effective 0001 hours (local time) July 1, 2003, until the 2004 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through July 31, 2003.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen or Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *carrie.nordeen@noaa.gov* or *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *http://www.access.gpo.gov/su_docs/ca/docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region website at: *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the 2003 fishing year (January 1 - December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2003 (68 FR 908, January 7, 2003) and as a proposed rule for March 1 - December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1 - December 31, 2003 was published in the **Federal Register** on March 7, 2003 (68 FR 11182). The final rule has been subsequently amended at 68 FR 18166 (April 15, 2003), at 68 FR 23901 (May 6, 2003), at 68 FR 23924 (May 6, 2003), and at 68 FR 32680 (June 2, 2003).

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its June 16–20, 2003, meeting in Foster City, CA. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments will be made as necessary to allow achievement of or avoid exceeding the 2003 optimum yields (OYs) and allocations.

Trawl Rockfish Conservation Area (RCA) North of 40°10′ N. Lat.

When the 2003 specifications and management measures were developed for the Pacific Coast groundfish fishery in the fall of 2002, the Pacific Council's Groundfish Management Team (GMT) developed a bycatch scorecard to project and track estimated mortality of overfished groundfish species during 2003. This scorecard is updated throughout the year as catch data become available. At the Pacific Council's June meeting, the scorecard was updated for canary rockfish, an overfished species, with catch data based on projected harvest under inseason adjustments for the May - June cumulative period, catch in Oregon's recreational fishery, catch under Washington's spiny dogfish shark and walleye pollock exempted fishing permits (EFPs), and information on vessel participation and target species by depth from 2002 fish tickets and logbooks. Based on these data, an additional 3.5 mt of canary rockfish is available to be harvested as incidental catch, in order to allow the access to more abundant species, during 2003 without exceeding the canary rockfish OY.

In order to provide additional fishing opportunity for the trawl fishery that has been severely restricted to reduce the incidental catch of canary rockfish, the size of the trawl RCA (the area closed to most fishing with trawl gear) is being decreased during the months of July and August. At their April 7–11, 2003, meeting in Vancouver, WA, the Pacific Council recommended that preliminary observer-based trawl bycatch rates be incorporated into the bycatch model used to develop inseason adjustments to trip limits and area closures. These observer-based trawl bycatch rates indicated that canary rockfish bycatch in the trawl fishery north of 40°10′ N. lat. is higher than previously estimated. Based on that new information, in May 2003, the trawl RCA was shifted to better align with areas where canary rockfish were encountered (between latitude and longitude coordinates that approximate the 50–fm (91–m) and 200–fm (366–m) depth contours) to slow that catch of canary rockfish. Using 2.85 mt (2,850 kg) of the additional 3.5 mt (3,500 kg) of canary rockfish available for harvest during 2003, this inseason action will restore trawl fishing opportunity by returning the eastern trawl RCA boundary to latitude and longitude coordinates approximating the 75–fm (137–m) depth contour. In addition to providing fishing opportunity, moving the eastern trawl RCA boundary out into deeper waters during July and August is expected to decrease interactions between the trawl fleet and molting, soft-shelled Dungeness crab found shoreward of 50–fm (91–m). In short, during the months of July and August, the trawl RCA will extend between latitude and longitude coordinates approximating the 75–fm (137–m) and 200–fm (366–m) depth contours. During the months of September - December, the trawl RCA will remain as previously scheduled, extending between coordinates approximating the 50–fm (91–m) and 200–fm (366–m) depth contours, with a western boundary modified to incorporate petrale fishing areas during November and December.

In the final rule announcing Pacific Coast annual specifications and management measures for March - December (68 FR 11182, March 7, 2003), a correction was made to the 75–fm (137–m) RCA boundary to prevent it from intersecting with the 100–fm (183–m) RCA boundary north of 40°10′ N. lat. This correction proved to be too coarse, resulting in the 75–fm (137–m) RCA boundary not closely following the 75–fm (137–m) depth contour in one section of the coast off Washington. Therefore, this inseason action will also correct the 75–fm (137–m) RCA boundary to better align it with the 75–fm (137–m) depth contour.

Limited Entry Trawl Limits for the DTS (Dover Sole, Thornyhead, Sablefish) Fishery Coastwide

In an effort to provide for fishing opportunity along the coast while keeping groundfish species within their respective 2003 OYs, the Pacific Council recommended trip limit adjustments for the DTS fishery. The GMT and the Pacific Council's Groundfish Advisory Panel (GAP) weighed the expected catch of canary rockfish and DTS species associated with previously scheduled DTS trip limits and RCA boundaries

against the expected catch of canary rockfish and DTS species associated with moving the eastern boundary of the trawl RCA south of 40°10′ N. lat. into deeper water (discussed below) when making DTS trip limit adjustments. Their goal was to provide adequate fishing opportunity while keeping the harvest of DTS species on track for the year and keeping the total mortality of canary rockfish within amounts forecast in the bycatch scorecard and within the canary rockfish OY.

Landed catch data through May 24, 2003, indicate that sablefish trawl catch was at 28 percent of the annual target with greater than 50 percent forecast to be taken within the last half of the year. There is a great deal of uncertainty in observer-based discard rates for sablefish. Should the final analysis of the observer-based discard rates result in higher estimates being used in 2003, the calculated harvest of sablefish may be greater than currently projected. Because new observer data will be available in September, the Pacific Council chose to slow the catch of sablefish during July and August, to ensure harvest opportunities through the end of the year, with the intent of increasing sablefish trawl trip limits later in the year, if possible. Therefore, the limited entry trawl sablefish limit north of 40°10′ N. lat. is decreased from the previously scheduled limit of 10,000 lb (4,536 kg) per 2 months to 9,000 lb (4,082 kg) per 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. The limited entry small footrope trawl sablefish limit, (i.e., if small footrope gear is used at any time in any area (north or south, seaward or shoreward of the RCA) during the entire limit period) remains unchanged at 3,000 lb (1,361 kg) per 2 months. South of 40°10′ N. lat., the limited entry trawl sablefish limit is decreased from the previously scheduled limit of 12,000 lb (5,443 kg) per 2 months to 9,000 lb (4,082 kg) per 2 months.

Landed catch data through May 24, 2003, indicate that Dover sole catch was at 38 percent of the annual target. North of 40°10′ N. lat., the Pacific Council recommended that Dover sole trip limits increase to allow for Dover sole retention by those vessels fishing seaward of the RCA. South of 40°10′ N. lat., Dover sole limits were previously scheduled to increase during July and August in compensation for lack of nearshore fishing opportunity. Because nearshore fishing opportunity was restored by moving the eastern trawl RCA boundary into deeper water, Dover sole trip limits were decreased to minimize the incidental catch of overfished species. Therefore, the limited entry trawl Dover sole limit north of 40°10′ N. lat. is increased from the previously scheduled limit of 31,000 lb (14,061 kg) per 2 months to 34,000 lb (15,513 kg) per 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. The limited entry small footrope trawl Dover sole limit, (i.e., if small footrope gear is used at any time in any area (north or south, seaward or shoreward of the RCA) during the entire limit period) remains unchanged at 12,500 lb (5,670 kg) per 2 months. South of 40°10′ N. lat., the limited entry trawl Dover sole limit is decreased from the previously scheduled limit of 35,000 lb (15,876 kg) per 2 months to 34,000 lb (15,513 kg) per 2 months.

Landed catch data indicate that shortspine thornyhead catch is higher than expected (44 percent of the annual target through May 24, 2003). Shortspine thornyhead is a long-lived species that cannot sustain aggressive harvest rates. This makes it a constraining species for the DTS complex fishery, because coincidental catch of shortspine thornyhead may prevent the harvest of Dover sole and longspine thornyhead. In order to keep the shortspine thornyhead catch within its 2003 OY while allowing for shortspine thornyhead retention during pursuit of sablefish or Dover sole with small footrope trawl gear, the Pacific Council recommended an adjustment to shortspine thornyhead trip limits. Therefore, the limited entry trawl shortspine thornyhead limit north of 40°10′ N. lat. is decreased from the previously scheduled limit of 2,800 lb (1,270 kg) per 2 months to 2,400 lb (1,089 kg) per 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. The limited entry small footrope trawl shortspine thornyhead limit, (i.e., if small footrope gear is used at any time in any area (north or south, seaward or shoreward of the RCA) during the entire limit period) is increased from the previously scheduled zero retention limit to 1,000 lb (454 kg) per 2 months. South of 40°10′ N. lat., the limited entry trawl shortspine thornyhead limit is decreased from the previously scheduled limit of 3,100 lb (1,406 kg) per 2 months to 2,400 lb (1,089 kg) per 2 months.

Landed catch data through May 24, 2003, indicate that longspine thornyhead catch was at 32 percent of the annual target. Because of the coincidental catch of shortspine thornyhead with longspine thornyhead in combination with moving the eastern boundary of the trawl RCA into deeper water during July and August, the catch ratio of shortspine to longspine thornyheads is expected to increase. In response to reduced trip limits for shortspine thornyhead and the need to maintain the catch ratio of 5 lb (2.27 kg) longspine thornyhead to 1 lb (0.45 kg) shortspine thornyhead, the Pacific Council also recommended an adjustment in longspine thornyhead trip limits. Therefore, the limited entry trawl longspine thornyhead limit north of 40°10′ N. lat. is decreased from the previously scheduled limit of 14,000 lb (6,350 kg) per 2 months to 11,500 lb (5,216 kg) per 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. The limited entry small footrope trawl longspine thornyhead limit, (i.e., if small footrope gear is used at any time in any area (north of south, seaward or shoreward of the RCA) during the entire limit period) is increased from the previously scheduled zero retention limit to 5,000 lb (2,268 kg) per 2 months. South of 40°10′ N. lat., the limited entry trawl longspine thornyhead limit is decreased from the previously scheduled limit 16,000 lb (7,257 kg) per 2 months to 11,500 lb (5,216 kg) per 2 months.

Limited Entry Fixed Gear and Open Access Minor Nearshore Rockfish Limits North of 40°10′ N. Lat.

Landed catch of nearshore rockfish in the limited entry fixed gear and open access fisheries off northern California is lower than anticipated through May 24, 2003. In an effort to enable the northern California fishery to achieve its nearshore rockfish harvest guideline, the trip limits for minor nearshore rockfish are increased from the previously scheduled limit of 3,000 lb (1,361 kg) per 2 months, no more than 900 lb (408 kg) of which may be species other than black or blue rockfish, to 4,000 lb (1,814 kg) per 2 months, no more than 1,200 lb (544 kg) of which may be species other than black or blue rockfish. This trip limit increase is consistent with Oregon's plans to proceed toward their nearshore rockfish catch cap. However, because the Oregon fishery is proceeding on schedule with their harvest of black and blue rockfish, this trip limit increase may require Oregon to take independent, State action at a later date to constrain their nearshore rockfish fishery in order to stay within their black rockfish catch cap.

Limited Entry Fixed Gear and Open Access Minor Nearshore Rockfish Limits South of 40°10′ N. Lat.

Because landings of minor nearshore rockfish south of 40°10′ N. lat. are higher than expected, there is concern whether this fishery will remain open the entire year. In order to ensure fishing opportunity later in the year, when market values for nearshore rockfish species are high, the Pacific Council recommended a decrease in the shallow nearshore rockfish limit. Therefore, the limited entry fixed gear and open access shallow minor nearshore rockfish limit south of 40°10′ N. lat. is decreased during the months of July and August from the previously scheduled limit of 500 lb (227 kg) per 2 months to 400 lb (181 kg) per 2 months. During the months of September and October, the limited entry fixed gear and open access shallow minor nearshore rockfish limit south of 40°10′ N. lat. is similarly decreased from the previously scheduled limit of 400 lb (181 kg) per 2 months to 300 lb (136 kg) per 2 months.

Landings of deeper nearshore rockfish species are not accumulating as rapidly as the landings of shallow nearshore rockfish. In order to keep landings on track for the year and provide harvest opportunity during summer months when participation in this fishery is high, the Pacific Council recommended that deeper nearshore rockfish trip limits be increased. Therefore, the limited entry fixed gear and open access deeper minor nearshore rockfish limit south of 40°10′ N. lat. is increased during the months of July and August from the previously scheduled limit of 400 lb (181 kg) per 2 months to 500 lb (227 kg) per 2 months. During the months of September and October, the limited entry fixed gear and open access deeper minor nearshore rockfish limit south of 40°10′ N. lat. is similarly increased from the previously scheduled limit of 200 lb (91 kg) per 2 months to 300 lb (136 kg) per 2 months.

Trawl Rockfish Conservation Area (RCA) South of 40°10′ N. Lat.

In exchange for higher limited entry trawl DTS trip limits scheduled during May - August 2003, the trawl RCA was scheduled to extend from the shoreline to latitude and longitude coordinates approximating the 200–fm (366–m) depth contour during the months of July and August. This scheduled placement of the RCA was designed to reduce nearshore fishing opportunity during those months, thereby, slowing the incidental catch of overfished rockfish species (bocaccio and canary rockfish). However, based on Pacific Council actions at their June meeting, this scheduled reduction of nearshore fishing opportunity will not be necessary for three reasons. The first reason is that an adequate amount of canary rockfish was made available on the Pacific Council's bycatch scorecard, as discussed above, to accommodate a modest nearshore fishing opportunity (expected to result in an additional 0.05 mt (500 kg) of catch) while still remaining within the canary rockfish OY. The second reason is that the GMT and GAP agreed to reduce limited entry trawl DTS trip limits coastwide from the previously scheduled limits, during the months of July and August, to allow for this additional nearshore fishing opportunity. The third reason is that an adequate amount of bocaccio was available on the bycatch scorecard to allow for this adjustment, which is expected to result in an additional 0.8 mt (800 kg) of catch. Therefore, the eastern boundary of the trawl RCA will move from the shoreline to latitude and longitude coordinates that approximate the 60–fm (110–m) depth contour between 40°10′ N. lat. and 34°27′ N. lat. and the 100–fm (183–m) depth contour between 34°27′ N. lat. and the U.S. boundary with Mexico for the months of July and August. Therefore, during the months of July and August, the trawl RCA between 40°10′ N. lat. and 34°27′ N. lat. will extend between latitude and longitude coordinates that approximate the 60–fm (110–m) and 200–fm (366- m) depth contours, and the trawl RCA between 34°27′ N. lat. and the U.S. border with Mexico will extend between latitude and longitude coordinates that approximate the 100–fm (183–m) and 200–fm (366–m) depth contours. The trawl RCA around southern California islands and seamounts will remain as previously scheduled, extending between the shoreline and latitude and longitude coordinates that approximate the 200–fm (366–m) depth contour. During the months of September - December, the trawl RCA will remain as previously scheduled, extending between eastern boundary coordinates approximating either the 60–fm (110- m) or 100–fm (183–m) depth contour and western boundary coordinates approximating the 200–fm (366–m) depth contour, with a western boundary for limited entry trawl modified to incorporate petrale fishing areas during November and December.

Non-Trawl Rockfish Conservation Area (RCA) and Recreational Fisheries Boundary South of 40°10′ N. Lat.

During 2003, the limited entry fixed gear fleet in California has been severely constrained by low trip limits and limited nearshore fishing opportunities, with the non-trawl RCA (the area closed to most fishing with non-trawl gear) extended from the 20–fm (37–m) depth contour to latitude and longitude coordinates approximating the 150–fm (274–m) depth contour. These management measures were designed to limit the incidental take of bocaccio rockfish and keep the catch of bocaccio within is 2003 OY of less than 20 mt (20,000 kg). The recreational fishing fleet in California has been similarly constrained, by a reduced season length (July - December) and limited nearshore fishing opportunities, generally shoreward of the 20–fm (37–m) depth contour, to minimize the incidental take of bocaccio. Based on a new stock assessment and rebuilding analysis that was available at the June meeting, the Pacific Council adopted a range of rebuilding OYs (199 mt (199,000 kg) to 526 mt (526,000kg)) for bocaccio in 2004. Taking into account this more recent stock assessment information (as compared with the OY of less than 20 mt (20,000 kg) for 2003) and the economic hardship resulting from restrictive management measures necessary to keep the incidental catch of bocaccio within its 2003 OY, the California Department of Fish and Game (CDFG) proposed to the Pacific Council that the 2003 bocaccio OY be flexible enough to allow for a modest increase in nearshore fishing opportunity. Specifically, CDFG proposed that during the months of September - December the eastern boundary for the non-trawl RCA and recreational fisheries between 34°27′ N. lat. and the U.S. border with Mexico be moved from the 20 fm (37 m) depth contour out to the 30 fm (55 m) depth contour. This boundary change was recommended by the Pacific Council because it would provide much needed harvest opportunity and economic relief for limited entry fixed gear and recreational fishers with an expected incidental take of an additional 2.22 mt (2,220 kg) of bocaccio. The projected incidental take of bocaccio associated with moving the eastern trawl RCA boundary (the portion south of 40°10′ N. lat.) into deeper water during July and August, as discussed earlier and implemented with this **Federal Register** document, is not expected to result in the total mortality of bocaccio exceeding its 2003 OY. However, the projected catch associated

with changing the eastern boundary of the trawl RCA in combination with the projected incidental catch of 2.22 mt (2,200 kg) associated with moving the eastern non-trawl RCA/recreational boundary (the portion south of 34°27′ N. lat.) into deeper water during September - December, is expected to result in the bocaccio total mortality exceeding the 2003 bocaccio OY by approximately 2 mt (2,000 kg). Because of the additional complexities of this proposal, and because it does not need to be implemented on July 1, NMFS is not implementing the eastern non-trawl RCA and/or recreational fishing boundary change with this **Federal Register** document so as not to delay the July 1 inseason adjustment. However, NMFS is considering CDFG's request and the Pacific Council's recommendation and any action to change the eastern non-trawl RCA/recreational boundary to accommodate CDFG's request and the Pacific Council's recommendation will occur in a future action published in the **Federal Register**.

NMFS Actions

For the reasons stated herein, NMFS concurs with the Pacific Council's recommendations implemented herein and hereby announces the following changes to the 2003 management measures (68 FR 11182, March 7, 2003, as amended at 68 FR 18166, April 15, 2003, at 68 FR 23901, May 6, 2003, at 68 FR 23925, May 6, 2003, and at and at 68 FR 32680, June 2, 2003) to read as follows:

1. On page 11206, in section IV., under A. General Definitions and Provisions, paragraph (19)(e)(ii) is revised to read as follows:

(ii) The 75 fm (137 m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

(1) 48°16.08′ N. lat., 125°34.90′ W. long.;
(2) 48°14.50′ N. lat., 125°29.50′ W. long.;
(3) 48°12.08′ N. lat., 125°28.00′ W. long.;
(4) 48°09.00′ N. lat., 125°28.00′ W. long.;
(5) 48°07.80′ N. lat., 125°31.70′ W. long.;
(6) 48°04.28′ N. lat., 125°29.00′ W. long.;
(7) 48°02.50′ N. lat., 125°25.70′ W. long.;
(8) 48°10.00′ N. lat., 125°20.19′ W. long.;
(9) 48°21.70′ N. lat., 125°17.56′ W. long.;
(10) 48°23.12′ N. lat., 125°10.25′ W. long.;
(11) 48°21.99′ N. lat., 125°02.59′ W. long.;
(12) 48°23.05′ N. lat., 124°48.80′ W. long.;
(13) 48°17.10′ N. lat., 124°54.82′ W. long.;
(14) 48°05.10′ N. lat., 124°59.40′ W. long.;
(15) 48°04.50′ N. lat., 125°02.00′ W. long.;
(16) 48°04.70′ N. lat., 125°04.08′ W. long.;
(17) 48°05.20′ N. lat., 125°04.90′ W. long.;
(18) 48°06.80′ N. lat., 125°06.15′ W. long.;
(19) 48°05.91′ N. lat., 124°08.30′ W. long.;
(20) 48°07.00′ N. lat., 124°09.80′ W. long.;
(21) 48°06.93′ N. lat., 124°11.48′ W. long.;
(22) 48°04.98′ N. lat., 124°10.02′ W. long.;
(23) 47°54.00′ N. lat., 125°04.98′ W. long.;
(24)47°44.52′ N. lat., 125°00.00′ W. long.;
(25)47°42.00′ N. lat., 124°58.98′ W. long.;
(26)47°35.52′ N. lat., 124°55.50′ W. long.;
(27)47°22.02′ N. lat., 124°44.40′ W. long.;
(28)47°16.98′ N. lat., 124°45.48′ W. long.;
(29)47°10.98′ N. lat., 124°48.48′ W. long.;
(30)47°04.98′ N. lat., 124°49.02′ W. long.;
(31)46°57.98′ N. lat., 124°46.50′ W. long.;
(32)46°54.00′ N. lat., 124°45.00′ W. long.;
(33)46°48.48′ N. lat., 124°44.52′ W. long.;
(34)46°40.02′ N. lat., 124°36.00′ W. long.;
(35)46°34.09′ N. lat., 124°27.03′ W. long.;
(36)46°24.64′ N. lat., 124°30.33′ W. long.;
(37)46°19.98′ N. lat., 124°36.00′ W. long.;
(38) 46°18.14′ N. lat., 124°34.26′ W. long.;
(39) 46°18.72′ N. lat., 124°22.68′ W. long.;
(40) 46°14.64′ N. lat., 124°22.54′ W. long.;
(41) 46°11.08′ N. lat., 124°30.74′ W. long.;
(42) 46°04.28′ N. lat., 124°31.49′ W. long.;
(43) 45°55.97′ N. lat., 124°19.95′ W. long.;
(44) 45°44.97′ N. lat., 124°15.96′ W. long.;
(45) 45°43.14′ N. lat., 124°21.86′ W. long.;
(46) 45°34.44′ N. lat., 124°14.44′ W. long.;
(47) 45°15.49′ N. lat., 124°11.49′ W. long.;
(48) 44°57.31′ N. lat., 124°15.03′ W. long.;
(49) 44°43.90′ N. lat., 124°28.88′ W. long.;
(50) 44°28.64′ N. lat., 124°35.67′ W. long.;
(51) 44°25.31′ N. lat., 124°43.08′ W. long.;
(52) 44°17.15′ N. lat., 124°47.98′ W. long.;
(53) 44°13.67′ N. lat., 124°54.41′ W. long.;
(54) 43°56.85′ N. lat., 124°55.32′ W. long.;
(55) 43°57.50′ N. lat., 124°41.23′ W. long.;
(56) 44°01.79′ N. lat., 124°38.00′ W. long.;
(57) 44°02.16′ N. lat., 124°32.62′ W. long.;
(58) 43°58.15′ N. lat., 124°30.39′ W. long.;
(59) 43°53.25′ N. lat., 124°31.39′ W. long.;
(60) 43°35.56′ N. lat., 124°28.17′ W. long.;
(61) 43°21.84′ N. lat., 124°36.07′ W. long.;
(62) 43°19.73′ N. lat., 124°34.86′ W. long.;
(63) 43°09.38′ N. lat., 124°39.30′ W. long.;
(64) 43°07.11′ N. lat., 124°37.66′ W. long.;
(65) 42°56.27′ N. lat., 124°43.29′ W. long.;
(66) 42°45.00′ N. lat., 124°41.50′ W. long.;
(67) 42°39.72′ N. lat., 124°39.11′ W. long.;
(68) 42°32.88′ N. lat., 124°40.13′ W. long.;
(69) 42°32.30′ N. lat., 124°39.04′ W. long.;
(70) 42°26.96′ N. lat., 124°44.31′ W. long.;
(71) 42°24.11′ N. lat., 124°42.16′ W. long.;
(72) 42°21.10′ N. lat., 124°35.46′ W. long.;
(73) 42°14.72′ N. lat., 124°32.30′ W. long.;
(74) 42°09.24′ N. lat., 124°32.04′ W. long.;
(75) 42°01.89′ N. lat., 124°32.70′ W. long.;
(76) 42°00.03′ N. lat., 124°32.02′ W. long.;
(77) 42°00.00′ N. lat., 124°32.02′ W. long.;
(78) 41°46.18′ N. lat., 124°26.60′ W. long.;
(79) 41°29.22′ N. lat., 124°28.04′ W. long.;

(80) 41°09.62′ N. lat., 124°19.75′ W. long.;

(81) 40°50.71′ N. lat., 124°23.80′ W. long.;

(82) 40°43.35′ N. lat., 124°29.30′ W. long.;

(83) 40°40.24′ N. lat., 124°29.86′ W. long.;

(84) 40°37.50′ N. lat., 124°28.68′ W. long.;

(85) 40°34.42′ N. lat., 124°29.65′ W. long.;

(86) 40°34.74′ N. lat., 124°34.61′ W. long.;

(87) 40°31.70′ N. lat., 124°37.13′ W. long.;

(88) 40°25.03′ N. lat., 124°34.77′ W. long.;

(89) 40°23.58′ N. lat., 124°31.49′ W. long.;

(90) 40°23.64′ N. lat., 124°28.35′ W. long.;

(91) 40°22.53′ N. lat., 124°24.76′ W. long.;

(92) 40°21.46′ N. lat., 124°24.86′ W. long.;

(93) 40°21.74′ N. lat., 124°27.63′ W. long.;

(94) 40°19.76′ N. lat., 124°28.15′ W. long.;

(95) 40°18.00′ N. lat., 124°25.38′ W. long.;

(96) 40°18.54′ N. lat., 124°22.94′ W. long.;

(97) 40°15.55′ N. lat., 124°25.75′ W. long.;

(98) 40°16.06′ N. lat., 124°30.48′ W. long.;

(99) 40°15.75′ N. lat., 124°31.69′ W. long.; and

(100) 40°10.00′ N. lat., 124°21.28′ W. long.

* * * * *

2. On pages 11218–11221, in section IV., under B. Limited Entry Fishery, at the end of paragraph (1), Table 3 (North), Table 3 (South, Table 4 (North), and Table 4 (South) are revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

BILLING CODE 3510–22–S

Table 3 (North). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear North of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA): North of 40°10' N. lat.	75 fm - 200 fm	50 fm - 200 fm	50 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.			
A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**			

1	**Minor slope rockfish[3/]**	1,800 lb/ 2 months
2	**Pacific ocean perch**	3,000 lb/ 2 months
3	**DTS complex**	
4	Sablefish	9,000 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the sablefish limit is 3,000 lb/2 months.
5	Longspine thornyhead	11,500 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the longspine thornyhead limit is 5,000 lb/ 2 months.
6	Shortspine thornyhead	2,400 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the shortspoine thornyheads limit is 1,000 lb/2 months.
7	Dover sole	34,000 lb/ 2 months, providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, shoreward or seaward of RCA) during the entire limit period, then the Dover sole limit is 12,500 lb/ 2 months.

Table 3 (North) continued

8	**Flatfish**			
9	All other flatfish[4/]	All other flatfish plus petrale & rex sole: 100,000 lb/ 2 months, no more than 30,000 lb/ 2 months of which may be petrale sole providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 20,000 lb/ 2 months, no more than 10,000 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months
10	Petrale sole			Not limited
11	Rex sole	Included in all other flatfish		
12	Arrowtooth flounder	200,000 lb/ 2 months providing that only large footrope or midwater trawl gear is used to land any groundfish species during the entire limit period. If small footrope gear is used at any time in any area (North or South, inshore or offshore of RCA) during the entire limit period, then 5,000 lb/2 mo.		
13	**Whiting**[5/]	Primary Season (only mid-water trawl permitted in the RCA)	10,000 lb/ trip	
14	**Other Fish**[9/]	Not limited		
15	**Use of small footrope bottom trawl**[7/] **or mid-water trawl is required for landing all of the following species:**			
16	**Minor shelf rockfish and widow rockfish**[3/]	1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish		300 lb/ month
17	**Widow rockfish**			
18	mid-water trawl - permitted within the RCA	During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month	CLOSED[6/]	12,000 lb/ 2 months
19	**Canary rockfish**	300 lb/ month	100 lb/ month	

Table 3 (North) continued

20	**Yellowtail**		
21	mid-water trawl - permitted within the RCA	During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month	18,000 lb/ 2 months
22	small footrope trawl[7/]	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Total yellowtail landings not to exceed 10,000 lb/ 2 months, no more than 1,000 lb of which may be landed without flatfish.	
23	**Minor nearshore rockfish**	300 lb/ month	
24	**Lingcod**[8/]	1,000 lb/ 2 months	800 lb/ 2 months

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).

2/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South). Trip Limits and Gear Requirements[1/] for Limited Entry Trawl Gear South of 40°10' N. Latitude[2/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[10/] (RCA):				
	40°10' - 38° N. lat.	60 fm - 200 fm		60 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
	38° - 34°27' N. lat.	60 fm - 200 fm		60 fm - 200 fm (line modified to incorporate petrale sole fishing grounds)
	South of 34°27' N. lat.	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands		100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands (line modified to incorporate petrale sole fishing grounds)
Small footrope or midwater trawl gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.				
A vessel may have more than one type of limited entry bottom trawl gear on board, but the most restrictive trip limit associated with the gear on board applies for that trip and will count toward the cumulative trip limit for that gear. A vessel may not have limited entry bottom trawl gear on board if that vessel also has trawl gear on board that is permitted for use within a RCA, including limited entry midwater trawl gear, regardless of whether the vessel is intending to fish within a RCA on that fishing trip. **See IV.A.(14)(iv) for details.**				
1	**Minor slope rockfish[3/]**			
2	40°10' - 38° N. lat.	1,800 lb/ 2 months		
3	South of 38° N. lat.	30,000 lb/ 2 months		
4	**Splitnose**			
5	40°10' - 38° N. lat.	1,800 lb/ 2 months		
6	South of 38° N. lat.	30,000 lb/ 2 months		
7	**DTS complex**			
8	Sablefish	9,000 lb/ 2 months		
9	Longspine thornyhead	11,500 lb/ 2 months		
10	Shortspine thornyhead	2,400 lb/ 2 months		
11	Dover sole	34,000 lb/ 2 months		
12	**Flatfish**			
13	All other flatfish[4/]	All other flatfish plus petrale & rex sole: 70,000 lb/ 2 months, no more than 20,000 lb/ 2 months of which may be petrale sole		70,000 lb/ 2 months
14	Petrale sole			No limit
15	Rex sole	Included in all other flatfish		
16	Arrowtooth flounder	1,000 lb/ 2 months		No limit

Table 3 (South) continued

17	**Whiting**[5/]	Primary Season (only mid-water trawl permitted within the RCA)	10,000 lb/ trip	
18	**Other Fish**[9/]	Not limited		
19	**Use of small footrope bottom trawl**[7/] **or mid-water trawl is required for landing all of the following species:**			
20	**Minor shelf rockfish, widow, and chilipepper rockfish**[3/]	300 lb/ month		
21	**Widow rockfish**			
22	mid-water trawl - permitted within the RCA	CLOSED[6/]		12,000 lb/ 2 months
23	**Canary rockfish**	300 lb/ month	100 lb/ month	
24	**Bocaccio**	CLOSED[6/]		
25	**Cowcod**	CLOSED[6/]		
26	**Minor nearshore rockfish**	300 lb/ month		
27	**Lingcod**[8/]	1,000 lb/ 2 months	800 lb/ 2 months	

1/ Gear requirements and prohibitions are explained above. See IV. A.(14).

2/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

3/ Yellowtail is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

4/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

5/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

6/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

7/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter.

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

10/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North). Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[8/] (RCA):				
	North of 46°16' N. lat.	shoreline - 100 fm		
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm		
1	**Minor slope rockfish[4/]**	No more than 25% of the weight of sablefish landed/ trip		1,800 lb/ 2 months
2	**Pacific ocean perch**	1,800 lb/ 2 months		
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		
4	**Longspine thornyhead**	9,000 lb/ 2 months		
5	**Shortspine thornyhead**	2,000 lb/ 2 months		
6	**Dover sole**	5,000 lb/ month		
7	**Arrowtooth flounder**			
8	**Petrale sole**			
9	**Rex sole**			
10	**All other flatfish[2/]**			
11	**Whiting[3/]**	10,000 lb/ trip		
12	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	200 lb/ month		
13	**Canary rockfish**	CLOSED[5/]		
14	**Yelloweye rockfish**	CLOSED[5/]		
15	**Cowcod**	CLOSED[5/]		
16	**Minor nearshore rockfish**	4,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[6/]		
17	**Lingcod[7/]**	400 lb/ month		CLOSED[5/]
18	**Other fish[9/]**	Not limited		

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Bocaccio and chilipepper are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40'00" N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

9/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South). Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

		JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA): South of 40°10' N. lat.	20 fm - 150 fm (See footnote 9 for description of Pt. Fermin/Newport South Jetty open area)	20 fm - 150 fm	
1	**Minor slope rockfish[4/]**			
2	40°10' - 38° N. lat.	No more than 25% of weight of sablefish landed/ trip		1,800 lb/ 2 months
3	South of 38° N. lat.	30,000 lb/ 2 months		
4	**Splitnose**			
5	40°10' - 38° N. lat.	1,800 lb/ 2 months		
6	South of 38° N. lat.	20,000 lb/ 2 months		
7	**Sablefish**			
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
10	**Longspine thornyhead**	9,000 lb/ 2 months		
11	**Shortspine thornyhead**	2,000 lb/ 2 months		
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.		
13	**Arrowtooth flounder**			
14	**Petrale sole**			
15	**Rex sole**			
16	**All other flatfish[2/]**			
17	**Whiting[3/]**	10,000 lb/ trip		
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19	**Canary rockfish**	CLOSED[5/]		
20	**Yelloweye rockfish**	CLOSED[5/]		
21	**Cowcod**	CLOSED[5/]		
22	**Bocaccio**	CLOSED[5/]		
23	**Minor nearshore rockfish**			
24	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	Deeper nearshore	500 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
26	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
27	**Lingcod[6/]**	400 lb/ month, when nearshore open		CLOSED[5/]
28	**Other fish[8/]**	Not limited		

Table 4 (South) continued

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e) that may vary seasonally.

8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

9/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except all rockfish and lingcod, with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

3. On page 11225, in section IV., under C. Trip Limits in the Open Access Fishery, at the end of paragraph (1), Table 5 (South) is revised to read as follows:

IV. NMFS Actions

C. Trip Limits in the Open Access Fishery

(1) * * *

Table 5 (North). 2003 Trip Limits for Open Access Gears North of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[8/] (RCA):				
	North of 46°16' N. lat.	0 fm - 100 fm		
	46°16' N. lat. - 40°10' N. lat.	27 fm - 100 fm		
1	**Minor slope rockfish[2/]**	Per trip, no more than 25% of weight of the sablefish landed		
2	**Pacific ocean perch**	100 lb/ month		
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		
4	**Thornyheads**	CLOSED[5/]		
5	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs.		
6	**Arrowtooth flounder**			
7	**Petrale sole**			
8	**Rex sole**			
9	**All other flatfish[3/]**			
10	**Whiting**	300 lb/ month		
11	**Minor shelf rockfish, widow and yellowtail rockfish[2/]**	200 lb/ month		
12	**Canary rockfish**	CLOSED[5/]		
13	**Yelloweye rockfish**	CLOSED[5/]		
14	**Cowcod**	CLOSED[5/]		
15	**Minor nearshore rockfish**	4,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[4/]		
16	**Lingcod[6/]**	300 lb/ month		CLOSED[5/]
17	**Other Fish[7/]**	Not limited		
18	**PINK SHRIMP EXEMPTED TRAWL** *(not subject to RCAs)*			
19	North	**Effective April 1 - October 31, 2003:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.		

Table 5 (North) continued

20	**PRAWN EXEMPTED TRAWL** *(not subject to RCAs)*	
21	North	Groundfish 300 lb/trip. Limits and closures in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip.
22	**SALMON TROLL**	
23	North	Salmon trollers may retain and land up to 1lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.

1/ "North" means 40°10' N. lat. to the U.S.-Canada border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Bocaccio and chilipepper rockfishes are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ For black rockfish north of Cape Alava (48°09'30" N. lat.), and between Destruction Island (47°40' N. lat.) and Leadbetter Point (46°38'10" N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The size limit for lingcod is 24 inches (61 cm) total length.

7/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

8/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table

		JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA):			
	South of 40°10' N. lat.	20 fm - 150 fm (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	20 fm - 150 fm	
1	**Minor slope rockfish[2/]**			
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed		
3	South of 38° N. lat.	10,000 lb/ 2 months		
4	**Splitnose**	200 lb/ month		
5	**Sablefish**			
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
8	**Thornyheads**			
9	40°10' - 34°27' N. lat.	CLOSED[5/]		
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months		
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.		
12	**Arrowtooth flounder**			
13	**Petrale sole**			
14	**Rex sole**			
15	**All other flatfish[3/]**			
16	**Whiting**	300 lb/ month		
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]		
19	**Yelloweye rockfish**	CLOSED[5/]		
20	**Cowcod**	CLOSED[5/]		
21	**Bocaccio**	CLOSED[5/]		

Table 5 (South) contined

22	**Minor nearshore rockfish**			
23	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
24	Deeper nearshore	500 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
26	**Lingcod**[4/]	300 lb/ month, when nearshore open		CLOSED[5/]
27	**Other Fish**[6/]	Not limited		
28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*			
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.		
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**			
31	**EXEMPTED TRAWL Rockfish Conservation Area**[7/] **(RCA):**			
32	40°10' - 38° N. lat.	60 fm - 200 fm		
33	38° - 34°27' N. lat.	60 fm - 200 fm		
34	South of 34°27' N. lat.	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands		
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25.)		

Table 5 (South) contined

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

8/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except all rockfish and lingcod, with hook&line and/or trap (or pot) gear may operate from shore to a boundary line approximating 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP and its implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the cumulative trip limit period for the Pacific Coast groundfish fishery begins July 1, 2003, and affording prior notice and opportunity for public comment would impede the Agency's function of managing fisheries to approach without exceeding the OYs for federally managed species. The trip limit adjustments in this document include both increases and decreases from previously scheduled trip limits, along with simultaneous shifts in the closed areas, or RCAs. Trip limit decreases must be implemented in a timely manner to protect overfished groundfish species and slow the harvest of other groundfish species, thereby, ensuring harvesting opportunities throughout the remainder of the year. Additionally, trip limit increases and shifts to the RCA are intended to allow harvest opportunity for fisheries targeting more abundant groundfish stocks with little or no impact on overfished stocks. Because the Pacific Coast groundfish fishery is managed by trip limits and area closures, most of which are based on a 2 month cumulative period (January-February, March-April, May-June, July-August, September-October, November-December), these actions should be implemented by the beginning of the next cumulative trip limit period (July 1, 2003) otherwise, for species for which the trip limits are being reduced, fishers may be able to take the entire two-month cumulative limit before the new lower limits are in place, thereby eliminating the conservation benefit anticipated from the lower trip limits in July and August. The increases to trip limits and reductions to the RCA in this inseason action allow fishers to access groundfish allocations without exceeding the OY for those species or the OYs of overfished or depleted stocks and delaying the increase could prevent the industry from obtaining the intended benefit of increased harvest opportunity. In addition, the affected public had the opportunity to comment on these actions at the June 16 20, 2003, Pacific Council meeting. For these reasons, good cause also exists to waive the 30 day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3). In addition, the increased trip limits and reduced RCAs relieve restrictions by providing greater harvest opportunities than were previously scheduled for the July - August period and thus they are not subject to a 30 day delay in effectiveness under 5 U.S.C. 553(d)(1).

These actions are taken under the authority of 50 CFR 300.63(a)(3) and 660.323(b)(1), and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 1, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–17058 Filed 7–1–03; 3:46 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 129
Monday, July 7, 2003

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 119, 121, 135, and 145

[Docket No. FAA–2003–15085; Notice No. 03–08]

RIN 2120–AG75

Hazardous Materials Training Requirements; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on May 8, 2003. In that document, the FAA proposed to amend its hazardous materials (hazmat) training requirements for certain air carriers and commercial operators and to require that certain repair stations document for the FAA that persons handling hazmat for transportation have been trained as required by the Department of Transportation's Hazardous Materials Regulations. This extension is a result of requests from the Aeronautical Repair Station Association and the Air Transport Association.

DATES: Comments must be received on or before September 5, 2003.

ADDRESSES: You may submit comments (identified by docket number FAA–2003–15085) by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal Rulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the discussion of ''Public Participation'' under the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the discussion of ''Privacy Act'' under the **SUPPLEMENTARY INFORMATION** section of this document.

For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time, or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Wilkening, Hazardous Materials Division, ASI–300, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–9864; facsimile (202) 267–9788.

SUPPLEMENTARY INFORMATION:

Public Participation

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

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

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

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478) or you may visit *http://dms.dot.gov*.

Background

On May 8, 2003, the FAA issued an NPRM on ''Hazardous Materials Training Requirements'' (65 FR 24810; May 8, 2003). Comments to that document were to be received on or before July 7, 2003.

By letters dated May 14, 2003, the Aeronautical Repair Station Association (ARSA) and the Air Transport Association (ATA) requested that the FAA extend the comment period on the NPRM for 60 days. ARSA stated that, considering the potential financial burden and substantive impact of the NPRM, it wants to conduct a survey of its members so that it can provide the FAA with meaningful comments. ATA stated that it wants more time to adequately develop its comments on the proposed changes to rules that have been in place for over 25 years.

Extension of Comment Period

In accordance with § 11.29 (c) of title 14, Code of Federal Regulations, the FAA has reviewed the requests from

ARSA and ATA for extension of the comment period. These petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA has determined that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period is extended until September 5, 2003.

Issued in Washington, DC, on June 27, 2003.

Ross Hamory,

Director, Security and Investigations.

[FR Doc. 03–17107 Filed 7–2–03; 11:37 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

[Docket No. 030604145–3145–01]

RIN 0648–AR16

Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Extension of public comment period.

SUMMARY: On June 11, 2003, The National Oceanic and Atmospheric Administration (NOAA) published a proposed rule to revise the Federal Consistency regulations under the Coastal Zone Management Act of 1972 (CZMA). 68 FR 34851–34874 (June 11, 2003). The public comment period was to expire on July 11, 2003. This document extends the public comment period on the proposed rule for an additional 45 days, until August 25, 2003.

DATES: Comments on the proposed rule must be received by August 25, 2003.

ADDRESSES: Please send comments as an attachment to an e-mail in either WordPerfect or MSWord, or in the body of an e-mail, to CZMAFC.*Proposed Rule@noaa.gov.*

Written comments may be sent to David Kaiser, Federal Consistency Coordinator, Coastal Programs Division, Office of Ocean and Coastal Resource Management, NOAA, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Written comments may also be sent to this address.

All comments received by the comment deadline, this **Federal Register** notice, the Proposed rule as published in the **Federal Register**, and an underline-strikeout version of the sections of the regulations proposed to be revised are/will be posed at OCRM's Federal Consistency Web page at: *http://coastalmanagement.noaa.gov/czm/federal_consistency.html.*

FOR FURTHER INFORMATION CONTACT: David Kaiser, Federal Consistency Coordinator, OCRM/NOAA, 301–713–3155 ext. 144, *david.kaiser@noaa.gov.*

SUPPLEMENTARY INFORMATION: On June 11, 2003, The National Oceanic and Atmospheric Administration (NOAA) published a proposed rule to revise the Federal Consistency regulations under the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451–1465. 68 FR 34851–34874 (June 11, 2003). NOAA's proposed rule addresses the CZMA-related recommendations of the Report of the National Energy Policy Development Group (Energy Report) and seeks to improve the Federal Consistency regulations by providing greater clarity, transparency and predictability. The public comment period was to expire on July 11, 2003. During the comment period, NOAA received requests from numerous entities seeking an extension of the public comment period. Some requests asked for a 30-day extension, others sought either a 60-day or 90-day extension. NOAA has considered all comments regarding the length of the public comment period and has decided to extend the public comment period on the proposed rule for an additional 45 days. The deadline for the public to submit comments on the proposed rule now ends on August 25, 2003. NOAA does not anticipate any additional extensions of the public comment period for this proposed rule.

Dated: June 30, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–17033 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM03–10–000]

Amendments to Blanket Sales Certificates

June 26, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend the blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce to require that pipelines and all sellers for resale adhere to a code of conduct with respect to gas sales. The purpose of the proposed revisions is to ensure the integrity of the gas sales market that remains within the Commission's jurisdiction. The notice of proposed rulemaking (NOPR) is another part of the Commission's continuing effort to restore confidence in the nation's energy markets.

DATES: Comments are due August 6, 2003.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8275, *david.faerberg@ferc.gov;*

Horatio Cipkus, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8927, *horatio.cipkus@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is proposing to amend the blanket certificates for unbundled gas sales services held by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates in interstate commerce to require that pipelines and all sellers for resale adhere to a code of conduct with respect to gas sales. The purpose of the proposed revisions is to ensure the integrity of the gas sales market that remains within the Commission's jurisdiction. This notice of proposed rulemaking (NOPR) is another part of the Commission's continuing effort to restore confidence in the nation's energy markets. Contemporaneously with this NOPR, the Commission is also issuing an order proposing to require sellers of electricity at market-based rates to adhere to certain behavioral rules when making sales of electricity.

II. Background

2. A decade ago, as a result of changes in the natural gas industry, Congressional legislation and various Commission rulemaking proceedings restructuring the gas industry, the Commission issued blanket certificates to allow pipelines and other persons selling natural gas to make sales for resale of natural gas at market-based or negotiated rates. These certificates were granted in two final rules issued by the Commission: Order No. 636 [1] and Order No. 547.[2]

3. In Order No. 636, the Commission required all pipelines that provide open-access transportation to offer their sales services on an unbundled basis. To this end, the Commission issued to pipelines holding a blanket transportation certificate under subpart G of part 284 of the Commission's regulations, or performing transportation under subpart B, a blanket certificate authorizing firm and interruptible sales for resale.[3] The Commission required that all firm and interruptible sales services be provided as unbundled services under the blanket sales certificate. The Commission found that this form of regulation would enable the pipelines to compete directly with other gas sellers on the same terms at prices determined in a competitive market. The unbundled sales services were also afforded pregranted abandonment.

4. In Order No. 636, the Commission authorized pipelines to make unbundled sales at market-based rates because it concluded that, after unbundling, sellers of short-term or long-term firm gas supplies (whether they be pipelines or other sellers) will not have market power over the sale of natural gas. The Commission's determination was also based on Congress' express finding that a competitive market exists for gas at the wellhead and in the field. The Commission indicated that it was instituting light-handed regulation, relying upon market forces at the wellhead or in the field to constrain unbundled pipeline sales for resale gas prices within the Natural Gas Act's ''just and reasonable'' standard. In addition, the requirement that pipelines provide open access transportation from the wellhead to the market also permitted the Commission to exercise light-handed regulation over jurisdictional gas sales. Finally, the Commission stated that it would be regulating the pipeline sales in the same manner as it had done for sales for resale by marketers.

5. The Commission also determined that a pipeline as a gas merchant would be the functional equivalent of a pipeline's marketing affiliate. The Commission concluded that Order No. 497's [4] standards of conduct would apply to the relationship between the pipeline transportation function and its merchant function. Accordingly, the regulations issuing pipelines blanket sales certificates included standards of conduct and reporting requirements. The purpose of imposing Order No. 497's requirements was to ensure that the pipeline did not favor itself as a merchant over other gas suppliers in performing its transportation function.

6. In Order No. 547, as part of the industry restructuring begun by Order No. 636, the Commission issued blanket certificates to all persons who are not interstate pipelines authorizing them to make jurisdictional gas sales for resale at negotiated rates with pregranted abandonment.[5] The blanket certificates were issued by operation of the rule itself and there was no requirement for persons to file applications seeking such authorization. The Commission determined that the competitive gas commodity market would lead all gas suppliers to charge rates that are sensitive to the gas sales market and cognizant of the variety of options available to gas purchasers. The Commission further stated that, in a competitive market, the basis for the rate to be negotiated between a willing buyer and seller is a commercial, not regulatory, matter. The requirement that pipelines provide open access transportation from the wellhead to the market also permitted the Commission to exercise light-handed regulation over jurisdictional gas sales. The Commission also determined that marketing certificates issued by the final rule are of a limited jurisdiction. The Commission held that the holders of marketing certificates are not subject to any other regulation under the Natural Gas Act jurisdiction of the Commission by virtue of transactions under the certificates.

III. Events in Western Energy Markets in 2000

7. In March 2003, in Docket No. PA02–2–000, the Commission Staff concluded its Fact Finding Investigation of Potential Manipulation of Electric and Gas Prices and issued a Final Report on Price Manipulation in Western Markets (Final Report). A key conclusion of the Final Report is that markets for natural gas and electricity in California are inextricably linked, and that dysfunctions in each fed off one another during the California energy crisis. Staff found that spot gas prices rose to extraordinary levels, facilitating the unprecedented price increase in the electricity market. The Final Report found that dysfunctions in the natural

[1] Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under part 284 of the Commission's regulations, and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC. Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, FERC. Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC. ¶ 61,272 (1992), *aff'd in part, rev'd in part, United Distribution. Cos.* v. *FERC,* 88 F.3d 1105 (DC Cir. 1996), *cert. denied,* 137 L. Ed. 2d 845, 117 S. Ct. 1723, 117 S. Ct. 1724 (1997), *on remand,* Order No. 636–C, 78 FERC. ¶ 61,186 (1997), *order on reh'g,* Order No. 636–D, 83 FERC ¶ 61,210 (1998).

[2] Regulations Governing Blanket Marketer Sales Certificates, FERC Stats. & Regs. ¶ 30,957 (1992), *order on reh'g and clarification,* 62 FERC ¶ 61,239 (1993).

[3] 18 CFR 284.281–287 (2002).

[4] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Statutes and Regulations, Regulation Preambles 1986–1990 ¶ 30,820 (1988), *order on rehearing,* Order No. 497–A , 54 FR 52781 (Dec. 22, 1989), FERC Statutes and Regulations, Regulation Preambles 1986–1990 ¶ 30,868 (1989), *order extending sunset date,* Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Statutes and Regulations, Regulation Preambles 1986–1990 ¶ 30,908 (1990), *order extending sunset date and amending final rule,* Order No. 497–C, 57 FR 9 (Jan. 2, 1992), FERC Statutes and Regulations ¶ 30,934 (1991), *reh'g denied,* 57 FR 5815, 58 FERC ¶ 61,139 (1992), *aff'd in part and remanded in part, Tenneco Gas* v. *Federal Energy Regulatory Commission,* 969 F.2d 1187 (DC Cir. 1992), *order on remand,* Order No. 497–D, 57 FR 58978 (Dec. 14, 1992), FERC Statutes and Regulations ¶ 30,958 (1992), *order on reh'g and extending sunset date,* Order No. 497–E, 59 FR 243 (Jan. 4, 1994), FERC Statutes and Regulations ¶ 30,987 (Dec. 23, 1994), *order on reh'g,* Order No. 497–F, 59 FR 15336 (Apr. 1, 1994), 66 FERC ¶ 61,347 (1994).

[5] 18 CFR 284.401–402 (2002).

gas market appear to stem, at least in part, from efforts to manipulate price indices compiled by trade publications. The Final Report stated that reporting of false data and wash trading are examples of efforts to manipulate published price indices.

8. While the Final Report contained numerous recommendations which will not be discussed here, the Staff did recommend that §§284.284 and 284.402 of the Commission's regulations be amended to provide explicit guidelines or prohibitions for trading natural gas under Commission blanket certificates. The specific recommendations include: (1) Conditioning natural gas companies' blanket certificates on providing accurate and honest information to entities that publish price indices; (2) conditioning blanket certificates on retaining all relevant data for three years for reconstruction of price indices; (3) establishing rules banning any form of prearranged wash trading; and (4) prohibiting the reporting of trades between affiliates to industry indices.

IV. The Commission's Proposal

A. Introduction

9. Over the past decade, the combination of wellhead decontrol mandated by Congress, open access transportation and the unbundling of pipeline gas sales from transportation increased efficiency and competition both in the gas commodity market and the transportation market. The Commission's open access and unbundling initiatives were supplemented by the actions of state regulators who also saw the need to begin to open local distribution company (LDC) systems by allowing large industrial and commercial customers to purchase their own gas and transport that gas both on the interstate pipeline and on the LDC's facilities. As a result of the Commission and state open access and unbundling efforts, more efficient and competitive markets developed that would reduce overall gas prices to customers.

10. The Commission's NGA jurisdiction to regulate the prices charged by sellers of natural gas has been substantially narrowed by the Natural Gas Policy Act of 1978 (NGPA) and Congress' subsequent enactment of the Natural Gas Wellhead Decontrol Act of 1989. The end result of these statutory provisions is that the only sales of natural gas that the Commission currently has jurisdiction to regulate are sales for resale of domestic gas by pipelines, local distribution companies (LDCs), or their affiliates so long as they do not produce the gas that they sell.[6] The Commission believes that reliance on competition for gas sales within its jurisdiction has been successful. It has been shown that the wellhead deregulation and reliance on competition in the natural gas industry has provided substantial economic benefits, including among other things, ''[l]ower national energy costs to consumers by over $600 billion as compared to continuation of tight regulations.'' [7] However, the Commission believes that, in light of Staff's determinations in the Final Report, it is the Commission's responsibility to ensure the integrity of the gas sales market that remains within the Commission's jurisdiction. Accordingly, pursuant to the Commission's authority under section 7 of the Natural Gas Act, the Commission proposes to revise §284.288 of its regulations, which is currently reserved, to require that pipelines providing unbundled sales service adhere to a code of conduct when making gas sales. The Commission also proposes to add a new §284.403 to part 284, subpart L to require persons holding blanket marketing certificates under §284.402 to adhere to a code of conduct when making gas sales.[8]

B. Proposed Code of Conduct

11. As a general matter, the Commission will prohibit pipelines making unbundled gas sales and persons making sales for resale in interstate commerce from engaging in actions or transactions without a legitimate business purpose that manipulate or attempt to manipulate market prices, market conditions, or market rules for natural gas or that result in prices that do not reflect the legitimate forces of supply and demand. The prohibited actions or transactions include but are not limited to pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk, and no net change in beneficial ownership (sometimes called ''wash trades'') and collusion with another party for the purpose of creating market prices at levels differing from those set by market forces. The Commission considers a legitimate business purpose to be an action consistent with appropriate behavior in a competitive market which is taken to further a firm's business objectives without engaging in manipulative, illegal, or otherwise anti-competitive acts. Engaging in manipulation, for example, in order to maximize profits is not a legitimate business purpose.

12. The Final Report found that wash trading adversely affected the California energy markets. A wash trade is a prearranged pair of trades of the same product between the same parties or an affiliate of a party, involving no economic risk and no net change in beneficial ownership between the parties or any affiliate. Such transactions do not appear to serve any legitimate business purpose. The Staff found that wash trading damages the integrity of the market because it can, among other things, create false liquidity, send false price signals, increase trading revenue figures, and adversely affect index prices reported for a market.

13. The Commission will require that blanket sales certificate holders provide complete, accurate and factual information when reporting transactions to publishers of gas price indices. The blanket sales certificate holder must notify the Commission of whether it engages in such reporting. The basis for this condition is the Final Report's finding that the process for reporting natural gas prices indices was fundamentally flawed. Staff found that gas traders had the ability and incentive to manipulate published prices because natural gas was the fuel input for generators that set the price for electricity in California. Further, the Commission could not independently verify price indices and there did not appear to be a systematic, reliable verification process employed by publishers of natural gas price indices. The Commission finds that accurate price indices are necessary in order to have a properly functioning competitive gas market.

14. In addition, the Commission is considering various options for addressing concerns regarding the validity of price indices. On April 24, 2002, we convened a public conference in Docket No. AD03–7–000, together with the Commodity Futures Trading Commission (CFTC), to consider natural gas price formation issues, including the development of alternative index formation models. At that conference and from comments submitted thereafter, we have received valuable

[6] See, Reporting of Natural Gas Sales to the California Market, 96 FERC ¶ 61,119 at 61,463, *reh'g,* 97 FERC ¶ 61,029 (2001), and San Diego Gas and Electric Company, *et al.,* 101 FERC ¶ 61,161 at P 10 (2002).

[7] Center for the Advancement of Energy Markets, California Here We Come: The Lessons Learned from Natural Gas Deregulation by Dr. Rodney Lemon (August 2001).

[8] Section 284.5 of the Commission's regulations also states that ''[t]he Commission may prospectively, by rule or order, impose such further terms and conditions as it deems appropriate on transactions authorized by this part.''

input helping us refine the options available. We are hopeful that the process begun on April 24th will lead to a solution. To that end, we have conducted a follow-up conference, also with CFTC participation, for both natural gas and electricity indices at which we further explored the options presented and attempted to move toward a consensus solution.

15. While we have indicated herein that we are considering requiring jurisdictional entities to report transactions to an entity responsible for index creation, we note that our efforts toward resolution of this issue will be in Docket No. AD03–7–000. Proposed 284.288(a)(1) and 284.403(a)(1) state that pipelines and blanket marketing certificate holders will be required to adhere to other standards or requirements as the Commission may order. Based upon our review of the record developed in Docket No. AD03–7–000, we may issue such an order to be implemented at the same time as the rules set forth herein.

16. The Commission will require blanket sales certificate holders to retain all relevant data for three years for reconstruction of price indices. This condition is also related to the Staff's findings that natural gas price indices were manipulated. During its investigation Staff found that there were significant barriers to the verification of natural gas price indices due, in large part, to the fact that many gas traders did not retain business records of their transactions for any significant length of time. Requiring pipelines and other jurisdictional gas sellers to maintain such records should promote transparent markets and either reduce or eliminate manipulation of gas price indices.

17. The Commission will also prohibit blanket sales certificate holders from reporting any transactions between affiliates to industry indices. The Final Report determined, as with wash trades, that there are certain types of transactions between affiliates that do not appear to have any legitimate business purpose. For example, the Final Report identified certain transactions between Enron affiliates that were completed at prices different from the true market and involved no net gain or loss to Enron as a whole. Staff found that transactions between affiliates were designed to give the impression of volatility or to affect average prices reported through market indices. Arms length transactions, on the other hand, provide useful price information to the broader market and provide a firm foundation for buyers and sellers.

C. Jurisdictional and Procedural Issues

18. The Commission is concerned with the effect of the proposed regulations on the natural gas market. Since the Commission's NGA jurisdiction to regulate the prices charged by sellers of natural gas has been substantially narrowed, the Commission seeks comment on whether application of the code of conduct to only part of the natural gas market will have any adverse effects on the natural gas market. For example, could jurisdictional sellers of natural gas restructure their businesses so as to avoid adherence to the code of conduct, could blanket certificate holders face a competitive disadvantage due to compliance with the code of conduct, or could there be any negative impact on natural gas prices?

19. Sections 284.288(b) and 284.403(b) require that pipelines and blanket marketing certificate holders notify the Commission whether or not they engage in reporting transactions to publishers of gas indices. In order to comply with this requirement, pipelines and blanket marketing certificate holders must submit a filing with the Commission within 30 days after the effective date of the rule indicating whether or not they are engaging in such reporting. Any person who does not submit a filing with the Commission and continues to make gas sales would be making them without Commission authority and would be subject to the Commission taking remedial action.

D. Remedies

20. The Commission proposes that violation of the code of conduct may result in the disgorgement of unjust profits, suspension or revocation of the blanket sales certificate or other appropriate non-monetary remedies. The Commission seeks comment on this issue.

21. The Commission also proposes a time limit in which a person may file a complaint against a blanket sales certificate holder for violation of the code of conduct. A person will be required to file a complaint against the certificate holder no later than 60 days after the end of the calendar quarter in which the alleged violation occurred, unless that person could not have known of the alleged violation, in which case the 60-day time limit will run from the discovery of the alleged violation. The Commission believes this properly balances the interests of persons who may have been adversely affected by violations of the code of conduct against the needs of blanket sales certificate holders for finality in their gas sales transactions. The 60-day time limit would not apply to any action or investigation initiated by the Commission or its Staff.

V. Information Collection Statement

22. The proposed rule would require jurisdictional gas sellers to retain certain records for three years and also require them to notify the Commission whether or not they engage in the reporting of natural gas sales transactions to publishers of gas indices. The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the section 3507(d) of the Paperwork Reduction Act of 1995.[9] OMB's regulations require OMB to approve certain information collection requirements imposed by agency rule.[10] The Commission identifies the information provided for under this rule as FERC–549.

23. Comments are solicited on the need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The burden estimates for complying with this proposed rule are as follows:

[9] 44 U.S.C. 3507(d).

[10] 5 CFR 1320.11.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–549:				
(Reporting)	222	222	1	222
(Recordkeeping)	222	222	2	444
Totals			3	666

Total annual hours for Collection (reporting + recordkeeping) = 666.

Information Collection Costs: The Commission seeks comments on the cost to comply with these requirements. It has projected the average annualized cost of all respondents to be:

Annualized Capital Startup Costs: 666 ÷ 2080 × $117,041 = $37,475.

This is a one time cost for the implementation of the proposed requirements.

24. OMB's regulations require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–549, Gas Pipeline Rates: Natural Gas Policy Act, Section 311 Transactions.

Action: Proposed Data Collection.

OMB Control No. 1902–0086.

25. Respondents will not be penalized for failure to respond to the collection of information unless the collection of information displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Businesses or other for profit.

Frequency of Responses: On occasion.

Necessity of Information: The proposed rule would revise the Commission's regulations to require that pipelines who provide unbundled sales service or persons holding blanket marketing certificates adhere to a code of conduct when making gas sales. In addition, the Commission will require blanket sales certificate holders to maintain certain data for a period of three years. The addition of the codes of conduct, retention of data and standards for accuracy are efforts by the Commission to ensure the integrity of the natural gas market that remains within its jurisdiction.

Internal review: The Commission has reviewed the requirements pertaining to blanket sales certificates and has determined the proposed revisions are necessary to ensure the integrity of the gas sales market that remains within its jurisdiction. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

26. Interested persons may obtain information on the information requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, Phone (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov.*)

27. For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285).

VI. Environmental Analysis

28. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[11] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[12] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[13] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VII. Regulatory Flexibility Act Certification

29. The Regulatory Flexibility Act of 1980 (RFA)[14] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.[15]

30. The Commission does not believe that this rule would have such an impact on small entities. Most of the entities required to comply with the proposed regulations would be pipelines, LDCs or their affiliates who do not meet the RFA's definition of a small entity whether or not they are under the Commission's jurisdiction.[16] It is likely that any small entities selling natural gas would be making gas sales that are no longer subject to the Commission's jurisdiction. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Comment Procedures

31. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due 30 days from publication in the **Federal Register**. Comments must refer to Docket No. RM03–10–000 and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

32. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make

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

[12] 18 CFR 380.4.

[13] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[14] 5 U.S.C. 601–612.

[15] 5 U.S.C. 605(b).

[16] 5 U.S.C. 601(3).

a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

33. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IX. Document Availability

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

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

36. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnLineSupport@ferc.gov.*

List of Subjects in 18 CFR Part 284

Continental shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Massey concurred in part with a separate statement attached. Commissioner Brownell concurred with a separate statement attached.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C.1331–1356.

2. Section 284.288 is added to read as follows:

§ 284.288 Code of conduct for unbundled sales service.

(a) A pipeline that provides unbundled natural gas sales service under § 284.284 is prohibited from engaging in actions or transactions without a legitimate business purpose that manipulate or attempt to manipulate market prices, market conditions, or market rules for natural gas or that result in prices that do not reflect the legitimate forces of supply and demand. Prohibited actions and transactions include but are not limited to:

(1) Pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk, and no net change in beneficial ownership (sometimes called ''wash trades''); and

(2) Collusion with another party for the purpose of creating market prices at levels differing from those set by market forces.

(b) To the extent a pipeline that provides unbundled natural gas sales service under § 284.284 engages in reporting of transactions to publishers of gas price indices, the pipeline shall provide complete, accurate and factual information to any such publisher. The pipeline shall notify the Commission of whether it engages in such reporting for all sales. In addition, the pipeline shall adhere to such other standards and requirements for price reporting as the Commission may order;

(c) A pipeline that provides unbundled natural gas sales service under § 284.284 must retain all relevant data and information necessary for the reconstruction of price indices for three years;

(d) A pipeline that provides unbundled natural gas sales service under § 284.284 is prohibited from reporting any natural gas sales transactions between the pipeline and its affiliates to industry indices.

(e) Violation of the preceding paragraphs may result in disgorgement of unjust profits, suspension or revocation of a pipeline's blanket certificate under § 284.284 or other appropriate non-monetary remedies.

(f) Any person filing a complaint against a pipeline for violation of paragraphs (a) through (d) of this section must do so no later than 60 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 60-day time limit will run from the discovery of the alleged violation.

§ 284.402 [Amended]

3. The second sentence of paragraph (a) of § 284.402 is removed.

4. Section 284.403 is added to read as follows:

§ 284.403 Code of conduct for persons holding blanket marketing certificates.

(a) Any person making natural gas sales for resale in interstate commerce pursuant to § 284.402 is prohibited from engaging in actions or transactions without a legitimate business purpose that manipulate or attempt to manipulate market prices, market conditions, or market rules for natural gas or that result in prices that do not reflect the legitimate forces of supply and demand. Prohibited actions and transactions include but are not limited to:

(1) Pre-arranged offsetting trades of the same product among the same parties, which involve no economic risk, and no net change in beneficial ownership (sometimes called ''wash trades''); and

(2) Collusion with another party for the purpose of creating market prices at levels differing from those set by market forces.

(b) To the extent a blanket marketing certificate holder engages in reporting of transactions to publishers of gas price indices, the blanket certificate holder shall provide complete, accurate and factual information to any such publisher. The blanket marketing certificate holder shall notify the Commission of whether it engages in such reporting for all sales. In addition, the blanket marketing certificate holder shall adhere to such other standards and requirements for price reporting as the Commission may order;

(c) A blanket marketing certificate holder must retain all relevant data and information necessary for the reconstruction of price indices for three years;

(d) A blanket marketing certificate holder is prohibited from reporting any natural gas sales transactions between the blanket marketing certificate holder and its affiliates to industry indices.

(e) Violation of the preceding paragraphs may result in disgorgement of unjust profits, suspension or revocation of a persons's blanket certificate under § 284.402 or other appropriate non-monetary remedies.

(f) Any person filing a complaint against a blanket marketing certificate holder for violation of paragraphs (a) through (d) of this section must do so no

later than 60 days after the end of the calendar quarter in which the alleged violation occurred unless that person could not have known of the alleged violation, in which case the 60-day time limit will run from the discovery of the alleged violation.

Massey, Commissioner, *concurring in part:*

I wholeheartedly support conditions to all market-based tariffs that declare manipulation off limits. Such outrageous behavior has cast a pall over the promise of energy markets and has brought some companies to dire financial straits. These tariff conditions should deter bad behavior in the future. If they fail to do so, then at least the Commission will have industry wide legal tools to provide appropriate remedies. I commend Chairman Wood's strong leadership in developing this proposal.

I am writing separately to express my concern with one aspect of today's proposal. I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the market prices paid by all market participants and collected by all sellers. The Natural Gas Act requires that all rates and charges be just and reasonable. Where the market has been manipulated so as to affect the market 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 tailor the remedy to the circumstances of each case. I encourage comments on this issue.

For these reasons, I concur in part with today's order.

William L. Massey,

Commissioner.

Brownell, Commissioner, *concurring:*

Today we issue a Notice of Proposed Rulemaking (NOPR) to amend the blanket certificates for unbundled gas sales service held by persons making sales for resale at negotiated rates in interstate commerce to require that sellers adhere to a code of conduct. The stated purpose of the proposed revisions is to ensure the integrity of the gas market that remains within the Commission's jurisdiction. Importantly, the NOPR attempts to balance three goals:

- Effective remedies on behalf of customers in the event anti-competitive behavior or other market abuses occur;
- Clearly delineated ''rules of the road'' to persons making sales for resale at negotiated rates in interstate commerce, at the same time, not impairing the Commission's ability to provide remedies for market abuses whose precise form and form can not be envisioned today; and
- Reasonable bounds within which conditions on market conduct will be implemented so as not to create unlimited regulatory uncertainty for individual market participants or harm to the marketplace in general.

I appreciate the need to balance these goals but still have some fundamental concerns about the proposal, particularly Sections 284.288(a) and 284.403(a). Scarcity pricing is a market response to a supply and demand imbalance. What constitutes legitimate forces of supply and demand and what defines scarcity pricing? I also fear that as the precise definition of manipulation develops over time we will end up with overly proscriptive ''rules of the road'' that will dampen innovative, legitimate business tools. Finally, I am concerned the proposed regulations could lead to the segmentation of the as commodity market. The only sales of natural gas that the Commission currently has jurisdiction to regulate are sales for resale of domestic gas by pipelines, local distribution companies, or their affiliates so long as they do not produce the gas that they sell. Could blanket certificate holders face a competitive disadvantage due to compliance with the code of conduct, or could there be any negative impact on natural gas prices? I ask for your comment on whether application of the code of conduct to only part of the natural gas market will have any adverse effects on the natural gas market.

Nora Mead Brownell,

Commissioner.

[FR Doc. 03–16820 Filed 7–3–03; 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).

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulation Nos. 4 and 16]

RIN: 0960–AF47

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Clarification of the Education and Previous Work Experience Categories in the Medical-Vocational Rules

AGENCY: Social Security Administration.

ACTION: Proposed rules.

SUMMARY: We propose revising our regulations to clarify how we evaluate your work experience and how we evaluate illiteracy or inability to communicate in English when we decide whether you are disabled.

We propose these revisions to ensure that our regulations clearly reflect our longstanding policy that, if you have skilled or semiskilled work experience, but you cannot use your skills in other work (*i.e.*, your skills are not transferable to other work), your ability to adjust to other work is no greater than it would be if you had only unskilled work experience.

We also propose revisions to clarify which medical-vocational rules apply if you are illiterate or unable to communicate in English; who we consider to be ''illiterate or unable to communicate in English''; and how we evaluate your claim if you are illiterate, unable to communicate in English, or both.

DATES: To be sure that your comments are considered, submit them no later than September 5, 2003.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*; e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830, or, by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, *regulations@ssa.gov*, (410) 965–1767, or TTY (410) 966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online, at *www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

What Programs Would These Proposed Regulations Affect?

These proposed regulations would affect disability determinations and decisions we make under title II and title XVI of the Social Security Act (the Act). In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these proposed regulations would also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Title XVI of the Act provides for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources. Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above and that results in . . .
Title II	An adult or a child	The inability to do any substantial gainful activity (SGA).
Title XVI	A person age 18 or older	The inability to do any SGA.
Title XVI	A person under age 18	Marked and severe functional limitations.

In addition, we only consider you to be disabled if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy. This is true regardless of whether this kind of work exists in the immediate area in which you live, whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (*See* sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

We will not consider you under a disability unless you furnish medical and other evidence that we need to show that you are disabled. (See section 223(d)(5)(A) and, by reference to section 223(d)(5), section 1614(a)(3)(H) of the Act.) However, when we decide whether you are disabled (or whether you continue to be disabled), we will develop a complete medical history of at least the preceding twelve months for any case in which we decide that you are not disabled. (*See* sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act.)

Who Makes the Rules, Regulations, and Procedures for Providing Evidence of Disability?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that ''* * * [t]he Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.''

How Do We Decide Whether You Are Disabled?

To decide whether you are disabled under the statutory definition, we use a five-step sequential evaluation process, which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and engaging in substantial gainful activity, we find that you are not disabled regardless of your medical condition or your age, education, and work experience. If not, we go on to step 2 of the sequence.
2. Do you have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities? If you do not, we find that you are not disabled. If you do, we go on to step 3 of the sequence.
3. Do you have an impairment(s) that meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If you do, and the impairment(s) meets the duration requirement, we find you disabled. If you do not, we go on to step 4 of the sequence.
4. Considering your residual functional capacity (RFC) and the physical and mental demands of the work you have done in the past, does your impairment(s) prevent you from doing your past relevant work? If not, we find that you are not disabled. If so, we go on to step 5 of the sequence.
5. Considering your RFC and your age, education, and past work experience, does your impairment(s) prevent you from doing any other work? If it does, and your impairment(s) meets the duration requirement, we find that you are disabled. If it does not, we find that you are not disabled.

We use different sequential evaluation processes if we are deciding whether your disability continues. See §§ 404.1594 and 416.994 of our regulations. However, these different processes also include steps that consider your RFC and past relevant work, and your ability to adjust to other work considering your RFC, age, education, and work experience.

How Do We Use the Medical-Vocational Rules?

At step 5 of the sequential evaluation process, we use the medical-vocational rules in appendix 2 of subpart P of part 404. (By reference, § 416.969 of the regulations provides that appendix 2 also applies to adults claiming SSI payments based on disability.) The medical-vocational rules take administrative notice of the existence of numerous unskilled occupations at the exertional levels defined in the regulations, such as ''sedentary,'' ''light,'' and ''medium.'' The rules consider your RFC and your age, education, and past work experience in terms of your ability to adjust to other work.

The medical-vocational rules direct a determination or decision as to whether you are disabled if your RFC and age, education, and past work experience exactly match the criteria in a rule. If your RFC or age, education, and past work experience do not match the criteria in a medical-vocational rule, the rules provide a framework for making a determination or decision at this step.

The medical-vocational rules reflect our policy that we consider that, as you

get older, your advancing age makes it increasingly more difficult for you to make an adjustment to other work. They also reflect our policy that we consider that, if you are illiterate or unable to communicate in English, you may have more difficulty adjusting to other work than a person who is literate and able to communicate in English.

If you have skilled or semiskilled work experience, you may have gained skills that make it easier for you to adjust to other work—even at an advanced age. If your skills can be used in (transferred to) other skilled or semiskilled work within your RFC, we will ordinarily find that you can adjust to other work and are not disabled regardless of your age or education.

Our regulations at §§ 404.1565(a) and 416.965(a) provide that, if your skills cannot be transferred to other work within your RFC, we consider you to be no better off than if you have only unskilled work experience. When all other vocational factors are the same, we will make the same decision if you have work skills that do not transfer to other work, as we will for a person who has unskilled work experience.

What Revisions Are We Proposing To Make, and Why?

Experience has shown that some of these medical-vocational rules can be subject to misinterpretation if you have skilled or semiskilled past relevant work or are illiterate or unable to communicate in English. Therefore, we propose to revise these rules, as described below, to make them clearer and easier to follow. None of these proposed modifications would change any of our policies.

Our rules say that we will find you disabled at step 5 if you are a younger individual (age 45–49), you can do only sedentary work, you are unable to communicate in English or unable to read or write in English, and your work experience is unskilled or you have no transferable skills. (See paragraph (h) of § 201.00 of appendix 2.) However, this policy is not reflected as clearly as it could be in the corresponding medical-vocational rules in Table No. 1 of appendix 2. Therefore, we propose revising the rules in Table No. 1 to make them clearer by:

- Revising the previous work experience criterion of rule 201.17 to clarify that this rule applies if you have unskilled or no work experience, or if you have skilled or semiskilled work experience with no transferable skills; and
- Revising the education criterion in rule 201.19 to clarify that this rule applies only if you are at least literate and able to communicate in English.

(The revisions we propose in rules 201.17 and 201.19 will also necessitate editorial revisions in the text of rules 201.18 and 201.20 because of the format of Table 1. However, this will not result in a change of the criteria for either of these rules.)

Our rules also say that we will find you disabled at step 5 if you are closely approaching advanced age (age 50–54), you are limited to light work, you are either illiterate or unable to communicate in English, and you have no work experience, unskilled work experience, or no transferable skills. (*See* paragraph (d) of § 202.00 of appendix 2.) However, this policy is not reflected as clearly as it could be in the medical-vocational rules in Table No. 2 of appendix 2. Therefore, we propose revising the rules in Table No. 2 to make them clearer by:

- Revising the previous work experience criterion in rule 202.09 to clarify that this rule applies if you have unskilled or no work experience, or if you have skilled or semiskilled work experience with no transferable skills; and
- Revising the education criterion in rule 202.11 to clarify that this rule applies only if you are at least literate and able to communicate in English.

(The revisions we propose in rules 202.09 and 202.11 will also necessitate editorial revisions in the text of rules 202.10 and 202.12 because of the format of Table 2. However, this will not result in a change of the criteria for either of these rules.)

A similar principle to those described above for Tables No. 1 and No. 2 applies under paragraph (c) of § 203.00 of appendix 2 and the medical-vocational rules in Table No. 3 of appendix 2. These provisions do not make it as clear as they could that we will find you disabled if you are closely approaching retirement age (age 60–64), you are illiterate or unable to communicate in English, and you have unskilled work experience or no transferable skills. Therefore, we propose revising § 203.00(c) and the rules in Table No. 3 of appendix 2 by:

- Revising the last sentence of current § 203.00(c) to make clear that, if you are limited to medium work, you are closely approaching retirement age (age 60–64), you have a marginal or less education (which includes being illiterate or unable to communicate in English), and you have unskilled work experience or skilled or semiskilled work experience with no transferable skills, a finding of disability is appropriate;
- Revising the education criterion of rule 203.01 to clarify that it applies if you are illiterate or unable to communicate in English;
- Revising the previous work experience criterion of rule 203.01 to clarify that it applies if you have no work experience, unskilled work experience, or if you have no transferable skills; and
- Revising the education criteria of rules 203.03 and 203.04 to clarify that they apply only if you have a limited education and are at least literate and able to communicate in English.

(The revisions we propose in rules 203.03 and 203.04 will necessitate an editorial revision in the text of rule 203.05 because of the format of Table 3. However, this will not result in a change of the criteria for this rule.)

In addition, we plan to revise Social Security Ruling 99–3p, ''Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older'' (64 FR 33337). Although SSR 99–3p provides guidelines for evaluating disability claims for individuals age 65 and over, it includes informational discussions about evaluation of individuals under age 65 as well. Some of the material in the ruling about § 203.00 of appendix 2 could be misleading, and we will revise that material consistent with the final version of these proposed rules.

We also propose revising our rules in §§ 404.1564 and 416.964 to clarify how we evaluate your ability to adjust to other work if you are illiterate or unable to communicate in English and what we mean by ''illiterate or unable to communicate in English.'' Several aspects of our policy are not as clear as they could be in our regulations.

We therefore propose revising the last sentence in §§ 404.1564(b) and 416.964(b), and reorganizing current §§ 404.1564(b)(1) and (b)(5) and 416.964(b)(1) and (b)(5) by combining paragraphs (b)(1) and (b)(5) into proposed §§ 404.1564(b)(1) and 416.964(b)(1). We also propose revising the text in (b)(1) to make it clearer. These proposed changes would clarify that ''illiterate or unable to communicate in English'' is a single education category. Currently, these sections discuss illiteracy separately from the inability to communicate in English, and they are not organized clearly.

For clarification purposes, we also propose revising the text of paragraphs (b)(1) and (b)(5) of current §§ 404.1564 and 416.964 (in proposed §§ 404.1564(b)(1) and 416.964(b)(1)) to clarify what we mean by the terms ''illiterate'' and ''unable to communicate

in English.'' On August 28, 2001, we issued final rules revising § 201.00(h) of Appendix 2 to clarify that the term ''illiterate'' means the inability to read or write in English (see 66 FR 45162). At that time, we also said that we would examine the use of the term ''illiterate'' throughout our regulations and, when appropriate, provide further clarification (66 FR 45163). The revisions we propose would make clear that we consider you to be illiterate or unable to communicate in English if you are unable to do any one, or any combination of, the following: read a simple message in English, write a simple message in English, speak in English, or understand English.

We also propose, in revised §§ 404.1564(b)(1) and 416.964(b)(1), to clarify that the rules we use if you are illiterate or unable to communicate in English also apply if you are both illiterate and unable to communicate in English. Although this is our longstanding policy, lack of clarity in our regulations has resulted in a different policy being applied to claims arising in the 5th Circuit (Louisiana, Mississippi, Texas) as the result of a court decision that interpreted our regulations differently from what we intended. (See Social Security Acquiescence Ruling 86–3(5), *Martinez* v. *Heckler,* 735 F.2d 795 (5th Cir. 1984)). This revision to clarify our regulations will allow us to restore national consistency to our disability programs and to rescind this Acquiescence Ruling.

Clarity of These Proposed Rules

Executive Order (E.O.) 12866, as amended by E.O. 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- What else could we do to make the rules easier to understand?

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: *http://www.access.gpo.gov/su_docs/aces/aces140.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.ssa.gov/regulations/.*

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they are subject to review by OMB. We have also determined that these proposed rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed regulations would impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security Disability Insurance; 96.002, Social Security Retirement Insurance; 96.004, Social Security Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: April 3, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subpart P of part 404 and subpart I of part 416 of 20 CFR Chapter III as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Amend § 404.1564 by revising the last sentence of paragraph (b), revising paragraph (b)(1), removing paragraph (b)(5), and redesignating paragraph (b)(6) as paragraph (b)(5), to read as follows:

§ 404.1564 Your education as a vocational factor.

* * * * *

(b) *How we evaluate your education.* * * * In evaluating your educational level, we use the following categories:

(1) *Illiterate or unable to communicate in English.* We consider an individual to be within the education level of illiterate or unable to communicate in English if he or she is illiterate, or unable to communicate in English, or both.

(i) *Illiterate.* Illiterate means either unable to read in English, unable to write in English, or both. Generally, a person who cannot read or write in English has had little or no formal schooling in English. We consider someone illiterate if he or she either cannot read or cannot write (or both) a simple message, such as instructions or inventory lists in English. If an individual can sign his or her name in English or read or write in another language, this does not mean that we will consider him or her to be literate in English. We will make this decision based on all of the evidence.

(ii) *Inability to communicate in English.* Because the ability to speak and understand English is generally learned or enhanced at school, we consider this as an education factor. Because English is the primary language of this country, it may be more difficult for someone who does not speak English or does not understand English to adjust to other work than it is for someone who can speak and understand English, regardless of the amount of education the person may have in another language. We consider an individual to be unable to communicate in English if he or she cannot speak English, or cannot understand English, or both.

* * * * *

3. Amend Table No. 1 in appendix 2 to subpart P of part 404—Medical-Vocational Guidelines by revising the previous work experience criterion of rule 201.17, revising the education criterion of rule 201.19, and revising rules 201.18 and 201.20 to read as follows:

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines

* * * * *

TABLE NO. 1.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
*	*	*	*	*
201.17	Younger individual age 45–49	Illiterate or unable to communicate in English.	Unskilled or none or skilled or semiskill—skills not transferable.	Disabled.
201.18	.....do	Limited or less—at least literate and able to communicate in English.	Unskilled or none	Not disabled.
201.19	.....do	.....do	Skilled or semi-skilled—skills not transferable.	Do.
201.20	.....do	Limited or less	Skilled or semi-skilled—skills transferable.	Do.
*	*	*	*	*

* * * * *

4. Amend Table No. 2 in appendix 2 to subpart P of part 404—Medical-Vocational Guidelines by revising the work experience criterion of rule 202.09, revising the education criterion of rule 202.11, and revising rules 202.10 and 202.12 to read as follows:

TABLE NO. 2.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
*	*	*	*	*
202.09	Closely approaching advanced age.	Illiterate or unable to communicate in English.	Unskilled or none or skilled or semi-skilled—skills not transferable.	Disabled.
202.10	.....do	Limited or less—at least iterate and able to communicate in English.	Unskilled or none	Not disabled.
202.11	.....do	.....do	Skilled or semi-skilled—skills not transferable.	Do.
202.12	.....do	Limited or less	Skilled or semi-skilled—skills transferable.	Do.
*	*	*	*	*

* * * * *

5. Revise last sentence of paragraph (c) of 203.00, appendix 2 to subpart P of part 404—Medical-Vocational Guidelines to read as follows:

§ 203.00

* * * * *

(c) * * * For individuals closely approaching retirement age (60–64) with past work experience of unskilled work, or skilled or semiskilled work experience with no transferable skills, and a marginal education or less (which includes being illiterate or unable to communicate in English), a finding of disabled is appropriate.

* * * * *

6. Amend Table No. 3 in appendix 2 to subpart P of part 404—Medical-Vocational Guidelines by revising the education and previous work experience criteria in rule 203.01, revising the education criterion in rule 203.04, and revising rules 203.03 and 203.05 to read as follows:

TABLE NO. 3.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age.	Marginal or less (includes illiterate or unable to communicate in English).	Unskilled or none or skilled or semi-skilled—skills not transferable.	Disabled.
203.02	.....do	Limited or less	None	Do.

TABLE NO. 3.—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
203.03	do	Limited—at least literate and able to communicate in English.	Unskilled	Not disabled.
203.04	do	do	Skilled or semi-skilled—skills not transferable.	Do.
203.05	do	Limited or less	Skilled or semi-skilled—skills transferable.	Do.
*	*	*	*	*

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

7. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

8. Amend § 416.964 by revising the last sentence of paragraph (b), revising paragraph (b)(1), removing paragraph (b)(5), and redesignating paragraph (b)(6) as paragraph (b)(5), to read as follows:

§ 416.964 Your education as a vocational factor.

* * * * *

(b) *How we evaluate your education.* * * * In evaluating your educational level, we use the following categories:

(1) *Illiterate or unable to communicate in English.* We consider an individual to be within the education level of illiterate or unable to communicate in English if he or she is illiterate, or unable to communicate in English, or both.

(i) *Illiterate.* Illiterate means either unable to read in English, unable to write in English, or both. Generally, a person who cannot read or write in English has had little or no formal schooling in English. We consider someone illiterate if he or she either cannot read or cannot write (or both) a simple message, such as instructions or inventory lists in English. If an individual can sign his or her name in English or read or write in another language, this does not mean that we will consider him or her to be literate in English. We will make this decision based on all of the evidence.

(ii) *Inability to communicate in English.* Because the ability to speak and understand English is generally learned or enhanced at school, we consider this as an education factor. Because English is the primary language of this country, it may be more difficult for someone who does not speak English or does not understand English to adjust to other work than it is for someone who can speak and understand English, regardless of the amount of education the person may have in another language. We consider an individual to be unable to communicate in English if he or she either cannot speak English, or cannot understand English, or both.

* * * * *

[FR Doc. 03–16859 Filed 7–3–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131997–02]

RIN 1545–BA85

Section 42 Carryover and Stacking Rule Amendments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that amend several existing regulations concerning the low-income housing tax credit. These proposed regulations primarily reflect changes to the law made by the Community Renewal Tax Relief Act of 2000 and affect owners of low-income housing projects who claim the credit and the State or local housing credit agencies who administer the credit. This document also contains a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments, requests to speak, and outlines of topics to be discussed at the public hearing scheduled for September 23, 2003, must be received by September 5, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–131997–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:PA:RU (REG–131997–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs.* The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauren R. Taylor, (202) 622–3040, or Christopher J. Wilson, (808) 539–2874; concerning submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554) (2000 Act) amended various provisions in section 42 of the Internal Revenue Code (Code), including provisions relating to the time for meeting the 10 percent basis requirement for carryover allocations under section 42(h)(1)(E) and (F), and the order in which housing credit dollar amounts are allocated from the different components of a State's housing credit ceiling under section 42(h)(3)(C). To conform the existing regulations to these changes, the proposed regulations contain amendments to § 1.42–6 (Buildings qualifying for carryover allocations) and § 1.42–14 (Allocation rules for post-1989 State housing credit

ceiling amounts) of the Income Tax Regulations (26 CFR part 1).

The proposed regulations also amend § 1.42–6 and § 1.42–8 (Election of appropriate percentage month) by removing the requirements that certain documents (for example, carryover allocation documents, election statements, and binding agreements) be attached to a taxpayer's income tax return when it is filed. These amendments help to facilitate the electronic filing of income tax returns.

Explanation of Provisions

Buildings Qualifying for Carryover Allocations

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 38. In general, the credit is allowable only if the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency (Agency) of the jurisdiction where the building is located.

In general, an allocation must be made not later than the close of the calendar year in which the building is placed in service. Under section 42(h)(1)(E), an allocation (carryover allocation) may be made to a ''qualified building'' that has not yet been placed in service, provided the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation. Prior to the 2000 Act changes, section 42(h)(1)(E)(ii) defined a qualified building as any building that is part of a project if the taxpayer's basis in the project (as of the close of the calendar year of the allocation) is more than 10 percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation). If the taxpayer failed to meet this 10 percent basis requirement by the close of the calendar year of the allocation, the carryover allocation was not valid and was treated as if it had not been made.

The 2000 Act amended the definition of a qualified building to provide that the 10 percent basis requirement must be met by the later of: (1) The date which is 6 months after the date that the allocation was made, or (2) the close of the calendar year in which the allocation is made. The proposed regulations amend the existing regulations to reflect this change. Thus, the proposed regulations provide that for carryover allocations made before July 1, a taxpayer must meet the 10 percent basis requirement as of the close of the calendar year of allocation. For carryover allocations made after June 30, a taxpayer must meet the 10 percent basis requirement by the close of the date that is 6 months after the date the allocation is made. In addition, the proposed regulations provide that an allocation made before July 1 will be invalid and will be treated as if it had not been made if the 10 percent basis requirement is not met by the close of the calendar year of the allocation. An allocation made after June 30 will be treated as validly made in the calendar year of the allocation but returned to the Agency the following calendar year if the 10 percent basis requirement is not met by the close of the date that is 6 months after the date the allocation is made.

The proposed regulations also facilitate the electronic filing of income tax returns by removing the requirement of § 1.42–6(d)(4)(i) that a taxpayer file a copy of the carryover allocation with its income tax return for the first taxable year a credit is claimed.

Election of Appropriate Percentage Month

Section 42(a) provides that the amount of the low-income housing credit for any taxable year in the 10-year credit period is the applicable percentage of the qualified basis of each qualified low-income building. Section 42(b)(2)(A) provides that, for any qualified low-income building placed in service by the taxpayer after 1987, the applicable percentage is the appropriate percentage prescribed by the Secretary for the month the building is placed in service, unless the taxpayer otherwise elects.

The taxpayer may elect to use the appropriate percentage for the month in which the taxpayer and the Agency enter into an agreement with respect to the building (which is binding on the Agency, the taxpayer, and all successors in interest) as to the housing credit dollar amount to be allocated to the building. In the case of a substantially bond-financed building (as described in section 42(h)(4)(B)), the taxpayer may elect to use the appropriate percentage for the month in which the tax-exempt obligations are issued. In either case, the election must be made no later than the 5th day after the close of the month elected by the taxpayer. An election, once made, is irrevocable.

The proposed regulations facilitate the electronic filing of income tax returns by removing the requirements of § 1.42–8(a)(6)(i) and § 1.42–8(b)(4)(i) that a taxpayer file a copy of the election statement (and, in the case of § 1.42–8(a)(6)(i), the binding agreement) with its income tax return for the first taxable year that credit is claimed.

Allocation Rules for Post-1989 State Housing Credit Ceiling Amounts

Under section 42(h), the aggregate housing credit dollar amount that an Agency may allocate for any calendar year is limited to the State housing credit ceiling (Credit Ceiling) apportioned to the Agency for that calendar year. Prior to the 2000 Act changes, section 42(h)(3)(C) provided that the Credit Ceiling of any State for any calendar year was an amount equal to the sum of: (a) $1.25 multiplied by the State population (the population component); (b) the unused Credit Ceiling, if any, of the State for the preceding calendar year (the unused carryforward component); (c) the amount of Credit Ceiling returned in the calendar year (the returned credit component); plus (d) the amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

Read together, sections 42(h)(3)(C) and 42(h)(3)(D)(ii) provide rules governing the order in which credit is allocated from the various components of the Credit Ceiling (the stacking rule). Prior to the 2000 Act changes the stacking rule provided that credit was allocated first from the sum of the population and returned credit components, then from the unused carryforward component, and finally, from the national pool component. In addition, unlike unallocated credit attributable to the population and returned credit components, unallocated credit attributable to the national pool component could not be carried forward, and therefore, was not included in the unused carryforward component of the following calendar year's Credit Ceiling.

The 2000 Act increased the size of the population component to the greater of (1) $1.75 ($1.50 for 2001) multiplied by the State population, or (2) $2,000,000, with these amounts being increased by a cost-of-living adjustment for calendar years after 2002. The proposed regulations amend the existing regulations to reflect this change.

The 2000 Act also amended the returned credit component of a Credit Ceiling for any calendar year to include credits from a carryover allocation made in the prior calendar year where a taxpayer fails to satisfy the 10 percent basis requirement by a date after the close of the calendar year of the allocation. The proposed regulations amend the final regulations to reflect this change.

Finally, the 2000 Act amended the stacking rule to provide that credit is allocated first from the unused carryforward component, then from the sum of the population, returned credit, and national pool components. The 2000 Act also amended the computation of the unused carryforward component. The proposed regulations amend the existing regulations to reflect these changes and clarify that under the 2000 Act changes, amounts remaining unallocated from the national pool component in a calendar year are included as part of the unused carryforward component of the following calendar year's Credit Ceiling.

Proposed Effective Date

The proposed regulations that reflect the changes made by the 2000 Act will be effective for housing credit dollar amounts allocated after the date these regulations are published as final regulations in the **Federal Register**. However, the proposed regulations that reflect the changes made by the 2000 Act may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and before the effective date of the final regulations. The proposed regulations that facilitate the electronic filing of income tax returns will be effective for forms filed after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a new collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. The collection of information contained in this notice of proposed rulemaking has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1102. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. Comments are requested on all aspects of the proposed regulations. In addition, comments are specifically requested on the clarity of the proposed regulations and how they can be revised to be more easily understood. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 23, 2003, at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area at the Constitution Avenue entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed (with the time to be devoted to each topic) by September 5, 2003.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Christopher J. Wilson and Lauren R. Taylor, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.42–6 is amended by:

1. Revising paragraph (a).
2. Amending Example 1. of paragraph (b)(4) by removing the word ''September'' and by adding the word ''May'' in its place; by removing the date ''1993'' each place it appears and by adding the date ''2003'' in its place; and by removing the date ''1995'' and adding the date ''2005'' in its place.
3. Revising Example 2. of paragraph (b)(4).
4. Revising paragraph (c)(1).
5. Amending the first and last sentences of paragraph (c)(2) by removing the language ''by the close of the calendar year of the allocation'' and adding the language ''by the close of the calendar year of the allocation (for allocations made before July 1) or by the close of the date that is 6 months after the date the allocation is made (for allocations made after June 30)'' in its place.
6. Revising paragraph (c)(3).
7. Revising paragraph (d)(2)(viii).
8. Revising paragraph (d)(4)(i).
9. Amending paragraph (d)(4)(ii) by removing the language '', 'Carryover Allocation of the Low-Income Housing Credit,' ''.
10. Amending the first sentence of paragraph (e)(2) by removing the language ''before the close of the calendar year of the allocation'' and adding the language ''by the close of the calendar year of the allocation (for allocations made before July 1) or by the close of the date that is 6 months after the date the allocation is made (for allocations made after June 30)'' in its place.

The revisions read as follows:

§ 1.42–6. Buildings qualifying for carryover allocations.

(a) *Carryover allocations*—(1) *In general.* A carryover allocation is an allocation that meets the requirements of section 42(h)(1)(E) or (F). If the requirements of section 42(h)(1)(E) or (F) that are required to be satisfied by the close of a calendar year are not satisfied, the allocation is not valid and is treated as if it had not been made for that calendar year. For example, if a carryover allocation fails to satisfy a requirement in § 1.42–6(d) for making an allocation, such as failing to be signed or dated by an authorized official of an allocating agency by the close of a calendar year, the allocation is not

valid and is treated as if it had not been made for that calendar year.

(2) *10 percent basis requirement.* A carryover allocation may only be made with respect to a qualified building. A qualified building is any building which is part of a project if, by the date specified under paragraph (a)(2)(i) or (ii) of this section, a taxpayer's basis in the project is more than 10 percent of the taxpayer's reasonably expected basis in the project as of the close of the second calendar year following the calendar year the allocation is made. For purposes of meeting the 10 percent basis requirement, the determination of whether a building is part of a single-building project or multi-building project is based on whether the carryover allocation is made under section 42(h)(1)(E) (building-based allocation) or section 42(h)(1)(F) (project-based allocation).

(i) *Allocation made before July 1.* If a carryover allocation is made before July 1 of a calendar year, a taxpayer must meet the 10 percent basis requirement by the close of that calendar year. If a taxpayer does not meet the 10 percent basis requirement by the close of the calendar year, the carryover allocation is not valid and is treated as if it had not been made.

(ii) *Allocation made after June 30.* If a carryover allocation is made after June 30 of a calendar year, a taxpayer must meet the 10 percent basis requirement by the close of the date that is 6 months after the date the allocation was made. If a taxpayer does not meet the 10 percent basis requirement by the close of the required date, the carryover allocation must be returned to the Agency. Unlike a carryover allocation made before July 1, if a taxpayer does not meet the 10 percent basis requirement by the close of the required date, the carryover allocation is treated as a valid allocation for the calendar year of allocation, but is included in the ''returned credit component'' for purposes of determining the State housing credit ceiling under section 42(h)(3)(C) for the calendar year following the calendar year of the allocation. See § 1.42–14(d)(1).

(b) * * *

(4) * * *

(iii) * * *

Example 2. (i) *Facts.* D, an accrual-method taxpayer, received a carryover allocation from Agency, the state housing credit agency of State X, on September 12, 2003. As of that date, D has not begun construction of the low-income housing building D plans to build and D does not have basis in the land on which D plans to build the building. From September 12, 2003, to the close of March 12, 2004, D incurs some costs related to the planned building, including architects' fees. As of the close of March 12, 2004, these costs do not exceed 10 percent of D's reasonably expected basis in the single-building project as of the close of 2005.

(ii) *Determination of whether building is qualified.* Because D's carryover-allocation basis as of the close of March 12, 2004, is not more than 10 percent of D's reasonably expected basis in the single-building project, the building is not a qualified building for purposes of section 42(h)(1)(E)(ii) and paragraph (a) of this section. Accordingly, the carryover allocation to D must be returned to the Agency. The allocation is valid for purposes of determining the amount of credit allocated by Agency from State X's 2003 State housing credit ceiling, but is included in the returned credit component of State X's 2004 housing credit ceiling.

(c) *Verification of basis by Agency*—(1) *Verification requirement.* An Agency that makes a carryover allocation to a taxpayer must verify that the taxpayer has met the 10 percent basis requirement of paragraph (a)(2) of this section.

(2) * * *

(3) *Time of verification.*—(i) *Allocations made before July 1.* For a carryover allocation made before July 1, an Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the calendar year of allocation or within a reasonable time following the close of the calendar year of allocation. The Agency will need to verify basis as provided in paragraph (c)(2) of this section to accurately complete the Form 8610, ''Annual Low-Income Housing Credit Agencies Report,'' and the Schedule A (Form 8610), ''Carryover Allocation of Low-Income Housing Credit,'' for the calendar year of the allocation. If the basis certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify before the Form 8610 is filed that the taxpayer has satisfied the 10 percent basis requirement for a carryover allocation made before July 1, the allocation is not valid and is treated as if it had not been made and the carryover allocation should not be reported on the Schedule A (Form 8610).

(ii) *Allocations made after June 30.* An Agency may require that the basis certification be submitted to or received by the Agency prior to the close of the date that is 6 months after the date the allocation was made or within a reasonable period of time following the close of the date that is 6 months after the date the allocation was made. The Agency will need to verify basis as provided in paragraph (c)(2) of this section. If the basis certification is not timely made, or supporting documentation is lacking, inadequate, or does not actually support the certification, the Agency should notify the taxpayer and try to get adequate documentation. If the Agency cannot verify that the taxpayer has satisfied the 10 percent basis requirement for a carryover allocation made after June 30, the allocation must be returned to the Agency. The carryover allocation is a valid allocation for the calendar year of the allocation, but is included in the returned credit component of the State housing credit ceiling for the calendar year following the calendar year of the allocation .

(d) * * *

(2) * * *

(viii) For carryover allocations made before July 1, the taxpayer's basis in the project (land and depreciable basis) as of the close of the calendar year of the allocation and the percentage that basis bears to the reasonably expected basis in the project (land and depreciable basis) as of the close of the second calendar year following the calendar year of allocation;

* * * * *

(4) *Recordkeeping requirements*—(i) *Taxpayer.* When an allocation is made pursuant to section 42(h)(1)(E) or (F), the taxpayer must retain a copy of the allocation document. The Form 8609 that reflects the allocation must be filed for the first taxable year that the credit is claimed and for each taxable year thereafter throughout the compliance period, whether or not a credit is claimed for the taxable year.

* * * * *

Par. 3. Section 1.42–8 is amended by:

1. Revising the second sentence of paragraph (a)(6)(i).

2. Revising paragraph (a)(6)(ii).

3. Redesignating the year ''1993'' as ''2003'' and the year ''1994'' as ''2004'' each place it appears in paragraph (a)(7), Example 1 and Example 2.

4. In *Example* 1. of paragraph (a)(7), revising the second to the last sentence of (ii), removing the second sentence of (iii), and revising (iv).

5. In *Example* 2. of paragraph (a)(7), removing the third sentence of (iii) and revising (iv).

6. Removing the third sentence of paragraph (b)(4)(i).

7. Revising paragraph (b)(4)(ii).

The revisions read as follows:

§ 1.42–8 Election of appropriate percentage month.

(a) * * *

(6) *Procedures*—(i) *Taxpayer.* * * * The taxpayer must retain a copy of the binding agreement and the election statement.

(ii) *Agency.* The Agency must retain the original of the binding agreement and election statement and, to the extent required by Schedule A (Form 8610), ''Carryover Allocation of Low-Income Housing Credit,'' account for the binding agreement and election statement on that schedule.

(7) * * *

Example 1. * * *

(ii) * * * Because allocations were made for the building in two separate calendar years, Agency must issue two Forms 8609, ''Low-Income Housing Credit Allocation Certification,'' to X. * * *

* * * * *

(iv) Agency retains the original of the binding agreement, election statement, and 2003 carryover allocation document. Agency accounts for the binding agreement, election statement, and 2003 carryover allocation on the Schedule A (Form 8610) that it files for the 2003 calendar year. After the building is placed in service in 2004, and assuming other necessary requirements for issuing a Form 8609 are met (for example, taxpayer has certified all sources and uses of funds and development costs for the building under § 1.42–17), Agency issues to X a copy of the Form 8609 reflecting the 2003 carryover allocation of $100,000. Agency accounts for the Form 8609 on the first Form 8610 that it files following the date the Form 8609 is issued to X. Agency also issues to X a copy of the Form 8609 reflecting the $50,000 allocation made in 2004 and accounts for the 2004 allocation on the Form 8610, ''Annual Low-Income Housing Credit Agencies Report,'' that it files for the 2004 calendar year. Agency retains copies of the Forms 8609 that are issued to X.

Example 2. * * *

* * * * *

(iv) Agency retains the original of the binding agreements, election statements, and carryover allocation documents. Agency accounts for the binding agreement, election statement, and 2003 carryover allocation on the Schedule A (Form 8610) that it files for the 2003 calendar year. Agency also accounts for the binding agreement, election statement, and 2004 carryover allocation on the Schedule A (Form 8610) that it files for the 2004 calendar year. After each separate new building is placed in service, and assuming other necessary requirements for issuing a Form 8609 are met (for example, taxpayer has certified all sources and uses of funds and development costs for the building under § 1.42–17), the Agency will issue to X a copy of the Form 8609 reflecting the 2003 carryover allocation of $70,000 and a copy of the Form 8609 reflecting the 2004 carryover allocation of $50,000, respectively. Agency accounts for each Form 8609 on the Form 8610 that reflects the calendar year each Form 8609 is issued. Agency retains copies of the Forms 8609 that are issued to X.

(b) * * *

(4) * * *

(ii) *Agency.* The Agency must retain the original of the election statement and a copy of the Form 8609 that reflects the election statement. The Agency must file an additional copy of the Form 8609 with the Agency's Form 8610 that reflects the calendar year the Form 8609 is issued.

Par. 4. Section 1.42–12 is amended by revising paragraph (a) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

(a) *Effective dates*—(1) *In general.* Except as provided in paragraphs (a)(2) and (a)(3) of this section, the rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12 are effective May 2, 1994. However, binding agreements, election statements, and carryover allocation documents entered into before May 2, 1994, that follow the guidance set forth in Notice 89–1, 1989–1 C.B. 620 (see § 601.601(d)(2)(ii)(b) of this chapter) need not be changed to conform to the rules set forth in §§ 1.42–6 and 1.42–8 through 1.42–12.

(2) *Community Renewal Tax Relief Act of 2000—In general.* Paragraphs (a), (b)(4)(iii) Example 1 and Example 2, (c), (d)(2)(viii), and (e)(2) of § 1.42–6 are effective for housing credit dollar amounts allocated after the date these regulations are published as final regulations in the **Federal Register**. However, the rules in paragraphs (a), (b)(4)(iii) Example 1 and Example 2, (c), (d)(2)(viii), and (e)(2) of § 1.42–6 may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and on or before the date these regulations are published as final regulations in the **Federal Register**. Otherwise, subject to the applicable effective dates of the corresponding statutory provisions, the rules that apply for housing credit dollar amounts allocated on or before the date these regulations are published as final regulations in the **Federal Register** are contained in § 1.42–6 in effect on and before these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2003).

(3) *Electronic filing simplification changes.* Section 1.42–6(d)(4) and § 1.42–8(a)(6)(i), (a)(6)(ii), (a)(7) *Example 1* and *Example 2*, (b)(4)(i), and (b)(4)(ii) are effective for forms filed after the date these regulations are published as final regulations in the **Federal Register**. The rules that apply for forms filed on or before the date these regulations are published as final regulations in the **Federal Register** are contained in § 1.42–6 and 1.42–8 in effect on and before these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2003).

* * * * *

Par. 5. Section 1.42–14 is amended by:

1. Revising the section heading and paragraph (a).
2. Removing paragraph (c).
3. Redesignating paragraph (b) as paragraph (c).
4. Adding a new paragraph (b).
5. Adding a new sentence at the end of paragraph (d)(2)(iv)(A).
6. Removing the second to the last sentence of paragraph (e).
7. Revising paragraph (g).
8. Revising paragraph (i)(2).
9. Revising paragraph (k).
10. Revising paragraph (l).

The revisions and addition read as follows:

§ 1.42–14. Allocation rules for post-2000 State housing credit ceiling amount.

(a) *State housing credit ceiling*—(1) *In general.* The State housing credit ceiling for a State for any calendar year after 2000 is comprised of four components. The four components are—

(i) The unused State housing credit ceiling, if any, of the State for the preceding calendar year (the unused carryforward component);

(ii) The greater of—

(A) $1.75 ($1.50 for calendar year 2001) multiplied by the State population, or

(B) $2,000,000 (the population component);

(iii) The amount of State housing credit ceiling returned in the calendar year (the returned credit component); plus

(iv) The amount, if any, allocated to the State by the Secretary under section 42(h)(3)(D) from a national pool of unused credit (the national pool component).

(2) *Cost of Living Adjustment*—(i) *General rule.* For any calendar year after 2002, the $2,000,000 and $1.75 amounts in paragraph (a)(1)(ii) of this section are each increased by an amount equal to—

(A) The dollar amount, multiplied by

(B) The cost-of-living adjustment determined under section 1(f)(3) for the calendar year by substituting ''calendar year 2001'' for ''calendar year 1992'' in section 1(f)(3)(B).

(ii) *Rounding.* Any increase resulting from the application of paragraph (a)(2)(i) of this section which, in the case of the $2,000,000 amount, is not a multiple of $5,000, is rounded to the next lowest multiple of $5,000, and which, in the case of the $1.75 amount, is not a multiple of 5 cents, is rounded to the next lowest multiple of 5 cents.

(b) *The unused carryforward component.* The unused carryforward component of the State housing credit ceiling for any calendar year is the unused State housing credit ceiling, if any, of the State for the preceding calendar year. The unused State housing credit ceiling for any calendar year is the excess, if any, of—

(1) The sum of the population, returned credit, and national pool components for the calendar year, over

(2) The aggregate housing credit dollar amount allocated for the calendar year reduced by the housing credit dollar amounts allocated from the unused carryforward component for the calendar year.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(A) *Building not qualified within required time period.* * * * Also, a building that has received a post-June 30 carryover allocation is not qualified within the required time period if the taxpayer does not meet the 10 percent basis requirement by the date that is 6 months after the date the allocation was made (as described in § 1.42–6(a)(2)(ii)).

* * * * *

(g) *Stacking order.* Credit is treated as allocated from the various components of the State housing credit ceiling in the following order. The first credit allocated for any calendar year is treated as credit from the unused carryforward component of the State housing credit ceiling for the calendar year. After all of the credit in the unused carryforward component has been allocated, any credit allocated is treated as allocated from the sum of the population, returned credit, and national pool components of the State housing credit ceiling.

* * * * *

(i) * * *

(2) *Unused housing credit carryover.* The unused housing credit carryover of a State for any calendar year is the excess, if any, of—

(i) The unused carryforward component of the State housing credit ceiling for the calendar year, over

(ii) The total housing credit dollar amount allocated for the calendar year.

* * * * *

(k) *Examples.*—(1) The operation of the rules of this section is illustrated by the following examples. Unless otherwise stated in an example, Agency A is the sole Agency authorized to make allocations of housing credit dollar amounts in State M, all of Agency A's allocations are valid, and for calendar year 2003, Agency A has available for allocation a State housing credit ceiling consisting of the following housing credit dollar amounts:

A. Unused carryforward component	$50
B. Population component	110
C. Returned credit component	10
D. National pool component	0
Total	170

(2) In addition, the $10 of returned credit component was returned before October 1, 2003.

Example 1— (i) *Additional facts.* By the close of 2003, Agency A had allocated $80 of the State M housing credit ceiling. Of the $80 allocated, $17 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The $80 of allocated credit is first treated as allocated from the unused carryforward component of the State housing credit ceiling. The $80 of allocated credit exceeds the $50 attributable to the unused carryforward component by $30. Because the unused carryforward component is fully utilized no credit will be forfeited by State M to the 2004 National Pool. The remaining $30 of allocated credit will next be treated as allocated from the $120 in credit determined by aggregating the population, returned credit, and national pool components ($110 + 10 + 0 = $120). The $90 of unallocated credit remaining in State M's 2003 State housing credit ceiling ($120 − 30 = $90) represents the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(iii) *Nonprofit set-aside.* Agency A allocated exactly the amount of credit to projects involving qualified nonprofit organizations as necessary to meet the nonprofit set-aside requirement ($17, 10% of the $170 ceiling).

Example 2— (i) *Additional facts.* By the close of 2003, Agency A had allocated $40 of the State M housing credit ceiling. Of the $40 allocated, $20 was allocated to projects involving qualified nonprofit organizations.

(ii) *Application of stacking rules.* The $40 of allocated credit is first treated as allocated from the unused carryforward component of the State housing credit ceiling. Because the $40 of allocated credit does not exceed the $50 attributable to the unused carryforward component, the remaining components of the State housing credit ceiling are unaffected. The $10 remaining in the unused carryforward component is assigned to the Secretary for inclusion in the 2004 National Pool. The $120 in credit determined by the aggregating the population, returned credit, and national pool components becomes the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(iii) *Nonprofit set-aside.* Agency A allocated $3 more credit to projects involving qualified nonprofit organizations than necessary to meet the nonprofit set-aside requirement. This does not reduce the application of the 10% nonprofit set-aside requirement to the State M housing credit ceiling for calendar year 2004.

Example 3— (i) *Additional fact.* None of the applications for credit that Agency A received for 2003 are for projects involving qualified nonprofit organizations.

(ii) *Nonprofit set-aside.* Because at least 10% of the State housing credit ceiling must be set aside for projects involving a qualified nonprofit organization, Agency A can allocate only $153 of the $170 State housing credit ceiling for calendar year 2003 ($170 − 17 = $153). If Agency A allocates $153 of credit, the credit is treated as allocated $50 from the unused carryforward component and $103 from the sum of the population, returned credit, and national pool components. The $17 of unallocated credit that is set aside for projects involving qualified nonprofit organizations becomes the unused carryforward component of State M's 2004 State housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

Example 4— (i) *Additional facts.* The $10 of returned credit component was returned prior to October 1, 2003. However, a $40 credit that had been allocated in calendar year 2002 to a project involving a qualified nonprofit organization was returned to the Agency by a mutual consent agreement dated November 15, 2003. By the close of 2003, Agency A had allocated $170 of the State M's housing credit ceiling, including $17 of credit to projects involving qualified nonprofit organizations.

(ii) *Effect of three-month rule.* Under the three-month rule of paragraph (d)(2)(iii) of this section, Agency A may treat all or part of the $40 of previously allocated credit as returned on January 1, 2004. If Agency A treats all of the $40 amount as having been returned in calendar year 2004, the State M housing credit ceiling for 2003 is $170. This entire amount, including the $17 nonprofit set-aside, has been allocated in 2003. Under paragraph (i)(3) of this section, State M qualifies for the 2004 National Pool.

(iii) *If three-month rule not used.* If Agency A treats all of the $40 of previously allocated credit as returned in calendar year 2003, the State housing credit ceiling for the 2003

calendar year will be $210 of which $50 will be attributable to the returned credit component ($10 + $40 = $50). Because credit amounts allocated to a qualified nonprofit organization in a prior calendar year that are returned in a subsequent calendar year do not retain their nonprofit character, the nonprofit set-aside for calendar year 2003 is $21 (10% of the $210 State housing credit ceiling). The $170 that Agency A allocated during 2003 is first treated as allocated from the unused carryforward component of the State housing credit ceiling. The $170 of allocated credit exceeds the $50 attributable to the unused carryforward component by $120. Because the unused carryforward component is fully utilized no credit will be forfeited by State M to the 2004 National Pool. The remaining $120 of allocated credit will next be treated as allocated from the $160 in credit determined by aggregating the population, returned credit, and national pool components ($110 + 50 + 0 = $160). The $40 of unallocated credit (which includes $4 of unallocated credit from the $21 nonprofit set-aside) remaining in State M's 2003 housing credit ceiling ($160 − 120 = $40) represents the unused carryforward component of State M's 2004 housing credit ceiling. Under paragraph (i)(3) of this section, State M does not qualify for credit from the 2004 National Pool.

(l) *Effective dates*—(1) *In general.* Except as provided in paragraph (l)(2), the rules set forth in this section are effective January 1, 1994.

(2) *Community Renewal Tax Relief Act of 2000 changes.* Paragraphs (a), (b), (c), (e), (i)(2) and (k) of this section are effective for housing credit dollar amounts allocated after the date these regulations are published as final regulations in the **Federal Register**. However, paragraphs (a), (b), (c), (e), (i)(2) and (k) of this section may be applied by Agencies and taxpayers for housing credit dollar amounts allocated after December 31, 2000, and on or before the date these regulations are published as final regulations in the **Federal Register**. Otherwise, subject to the applicable effective dates of the corresponding statutory provisions, the rules that apply for housing credit dollar amounts allocated on or before the date these regulations are published as final regulations in the **Federal Register** are contained in this section in effect on and before these regulations are published as final regulations in the **Federal Register** (see 26 CFR part 1 revised as of April 1, 2003).

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–16941 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–138495–02]

RIN 1545–BC36

Depreciation of Vans and Light Trucks

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that modify the existing regulations promulgated under section 280F(a) of the Internal Revenue Code relating to limitations on the depreciation allowance for passenger automobiles. The temporary regulations, which amend the definition of passenger automobiles for purposes of section 280F(a), affect certain taxpayers that use vans and light trucks in their trade or business. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by October 6, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–138495–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand delivered Monday though Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–138495–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Comments may also be submitted electronically to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bernard P. Harvey, (202) 622–3110; concerning submissions and to request a hearing, LaNita Van Dyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 280F of the Internal Revenue Code of 1986 (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS or electronically generated comments that are submitted timely to the IRS. The IRS generally requests any comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.280F–6 also issued under 26 U.S.C. 280F. * * *

2. Section 1.280F–6 is amended as follows:

§ 1.280F–6 Special rules and definitions.

[The text of this proposed section is the same as the text of the amendments to § 1.280F–6T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–17086 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[ND–047–FOR, Amendment No. XXXIV]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the ''North Dakota program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota proposes revisions to its rules about bonding, blasting, and revegetation success standards. North Dakota intends to revise its program to clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the North Dakota program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t. August 6, 2003. If requested, we will hold a public hearing on the amendment on August 1, 2003. We will accept requests to speak until 4 p.m., m.d.t. on July 22, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement (OSM's) Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Federal Building, Room 2128, Casper, Wyoming 82601–1918, 307–261–6550, *GPadgett@osmre.gov*.

James R. Deutsch, Director, Reclamation Division, Public Service Division, 600 East Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505–0480, 701–328–2400, *jrd@psc.state.nd.us*.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307–261–6550. Internet: *GPadgett@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980 **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.12, 934.13, 934.15, and 934.30.

II. Description of the Proposed Amendment

By letter dated April 23, 2003, North Dakota sent us a proposed amendment to its program (Amendment number ND–XXXIV), administrative record No. ND-II–01) under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The provisions of the North Dakota Administrative Code (NDAC) that North Dakota proposes to revise are: (1) NDAC 69–05.2–01–02, Definitions; (2) NDAC 69–05.2–12–01, Performance bond—General requirements; (3) NDAC 69–05.2–12–04, Performance bond—Collateral bond; (4) NDAC 69–05.2–17–07, Performance standards—Use of Explosives—Records of Blasting operations; and (5) NDAC69–05.2–22–07, Performance standards—Revegetation—Standards for success.

Specifically, NDAC 69–05.2–01–02 (Definitions) is being revised to add irrevocable letters of credit as one of the financial supports for a collateral bond; NDAC 69–05.2–12–01 (Performance bond—General requirements) is being revised to allow the posting of more than one bond to guarantee specific phases of reclamation within the permit area; NDAC 69–05.2–12–04 (Performance bond—Collateral bond) is being revised to specify that: (1) The permittee obtain prior North Dakota Public Service (Commission) approval of the bank that will issue the letter of credit, (2) the term of the letter must be at least one year, (3) the bank issuing the credit must give the Commission at least 90 days notice if it intends to terminate the credit at the end of the current term, (4) the Commission will not accept letters of credit in excess of 10 percent of the bank's total equity, and (5) the bank must provide the Commission with notice of any pending action that could result in suspension or revocation of the bank's charter or license to do business; NDAC 69–05.2–17–07 is being revised to make a minor editorial change to clarify that other structures (as well as dwellings, schools, churches, and commercial and institutional buildings) may be protected from certain blasting operations; and NDAC–69–05–22–07, minor editorial changes to North Dakota's revegetation success standards that clarify that the standards can be exceeded, as well as met, for demonstrating reclamation success.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Casper Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. ND–047–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 303/261–6555.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.d.t. on July 22, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the state submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface Mining, Underground Mining.

Dated: June 9, 2003.

Allen D. Klein,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–17084 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–120–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the Virginia regulatory program (Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment is intended to increase the permit and anniversary fees for Coal Surface Mining and Reclamation permits issued by the Virginia Department of Mines, Minerals and Energy (DMME).

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on August 6, 2003. If requested, we will hold a public hearing on the amendment on August 1, 2003. We will accept requests to speak at the hearing until 4 p.m. (local time), on July 22, 2003.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the address listed below.

You may review copies of the Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Big Stone Gap Field Office.

Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219; Telephone: (540) 523–4303. E-mail: *rpenn@osmre.gov.* Mr. Leslie S. Vincent, Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219; Telephone: (540) 523–8100. E-mail: *lsv@mme.state.va.us.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office; Telephone: (540) 523–4303. Internet: *rpenn@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Virginia program in the December 15, 1981, **Federal Register** (46 FR 61088). You can also find later actions concerning Virginia's program and program amendments at 30 CFR 946.12, 946.13, and 946.15.

II. Discussion of the Proposed Amendment

By letter dated May 16, 2003 (Administrative Record Number VA–1029), the DMME submitted an amendment to the Virginia program. In its letter, the DMME stated that the 2003 Virginia General Assembly enacted legislation (House Bill 2465/ Senate Bill 1173 approved March 18, 2003) to increase the permit and anniversary fees for Coal Surface Mining and Reclamation permits issued by DMME.

The proposed amendment revises the Code of Virginia at section 45.1–235.E and the Virginia Coal Surface Mining and Reclamation Regulations at 4VAC25–130–777.17 concerning permit fees. Specifically, Virginia is increasing the permit application fee for a surface coal mining and reclamation permit from $12.00 to $26.00 per acre or any

fraction thereof for the total acreage permitted. In addition, the anniversary fee is being increased from $6.00 to $13.00 per acre or any fraction thereof for areas disturbed under the permit.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Big Stone Gap Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include: ''Attn: SATS NO. VA–120–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Big Stone Gap Field office at (540) 523–4303.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on July 22, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive

Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–17083 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[CGD08–03–017]

RIN 1625–AA72

Safety Zone; Outer Continental Shelf Facility in the Gulf of Mexico in Mississippi Canyon 243

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone around a petroleum and gas production facility in Mississippi Canyon 243 of the Outer Continental Shelf in the Gulf of Mexico while the facility is being constructed and after the construction is completed. The construction site and facility need to be protected from vessels operating outside the normal shipping channels and fairways, and placing a safety zone around the construction site and facility would significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed regulation would prohibit all vessels from entering or remaining in the specified area around the construction site and facility except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander.

DATES: Comments and related material must reach the Coast Guard on or before September 5, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA, 70130, or comments and related material may be delivered to Room 1341 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–6271. Commander, Eighth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the location listed above during the noted time periods.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Requests for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–03–017], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. However, you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a safety zone around a petroleum and gas production facility in the Gulf of Mexico: Matterhorn Tension Leg Platform A (Matterhorn TLP), Mississippi Canyon 243 (MC 243), located at position 28°44′32″N, 88°39′32″ W. The safety zone would be

in effect while the facility is being constructed and after the construction is completed.

This proposed safety zone is in the deepwater area of the Gulf of Mexico. For the purposes of this regulation it is considered to be in waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the proposed safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The fairways include the Gulf of Mexico South Pass Fairway, and the South Pass to Mississippi River-Gulf Outlet Channel Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

TotalFinaElf E&P USA, Inc., hereafter referred to as TotalFinaElf has requested that the Coast Guard establish a safety zone in the Gulf of Mexico around the Matterhorn TLP construction site and for the zone to remain in effect after construction is completed.

The request for the safety zone was made due to the high level of shipping activity around the site of the facility and the safety concerns for construction personnel, the personnel on board the facility after it is completed, and the environment. TotalFinaElf indicated that the location, production level, and personnel levels on board the facility make it highly likely that any allision with the facility during and after construction would result in a catastrophic event. The Matterhorn TLP will be a high production petroleum and gas drilling facility, capable of producing approximately 30,000 barrels of oil per day and 50 million cubic feet of gas per day, and manned with a crew of approximately 60 people.

The Coast Guard has reviewed TotalFinaElf's concerns and agrees that the risk of allision to the facility and the potential for loss of life and damage to the environment resulting from such an accident during and following the construction of Matterhorn TLP warrants the establishment of this safety zone. The proposed regulation would significantly reduce the threat of allisions, oil spills and natural gas releases, and increase the safety of life, property, and the environment in the Gulf of Mexico. This regulation is issued pursuant to 14 U.S.C. 85 and 43 U.S.C. 1333 as set out in the authority citation for 33 CFR part 147.

Discussion of Proposed Rule

The specific risk factors which necessitate a safety zone for the Matterhorn TLP construction site and for the safety zone to remain in effect after the facility is completed are: (1) The construction site is located approximately 14 nautical miles southeast of the South Pass Fairway and on a direct course for vessels approaching the entrance to fairways to the Mississippi River; (2) the facility will have a high production capacity of 30,000 barrels of oil per day and 50 million cubic feet of gas per day; (3) the facility will be manned with a crew of 60 people; (4) the facility will be a tension leg platform; and (5) the platform, anchored by tendons, will slowly oscillate around a fixed position.

Regulatory Evaluation

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

The impacts on routine navigation are expected to be minimal because the safety zone will not overlap any of the safety fairways within the Gulf of Mexico.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Since the construction site for the Matterhorn TLP is located far offshore, few privately owned fishing vessels and recreational boats/yachts operate in the area and alternate routes are available for those vessels. Use of an alternate route may cause a vessel to incur a delay of 4 to 10 minutes in arriving at their destinations depending on how fast the vessel is traveling. Therefore, the Coast Guard expects the impact of this regulation on small entities to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Karrie Trebbe, Project Manager for Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130, telephone (504) 589–6271.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

2. Add § 147.829 to read as follows:

§ 147.829 Matterhorn Tension Leg Platform safety zone.

(a) *Description.* The Matterhorn Tension Leg Platform A (Matterhorn TLP), Mississippi Canyon 243 (MC 243), located at position 28°44′32″ N, 88°39′32″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone. These coordinates are based upon [NAD 83].

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following: (1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: April 29, 2003.

Roy J. Casto,

Rear Admiral, Coast Guard, Commander Eighth Coast Guard District.

[FR Doc. 03–16963 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Mobile–03–013]

RIN 1625–AA00

Security Zone; Bayou Casotte, Pascagoula, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone encompassing all waters of Bayou Casotte east of a line drawn from position 30°19′09″ N, 88°30′63″ W to position 30°20′42″ N, 88°30′51″ W at the Chevron Pascagoula Refinery. This security zone is necessary to protect Chevron Pascagoula refinery, persons, and vessels from subversive or terrorist acts. Entry of persons or vessels into this security zone will be prohibited unless authorized by the Captain of the Port Mobile, or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before September 5, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390. Marine Safety Office Mobile maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Mobile, Brookley Complex, Bldg 102, South Broad Street, Mobile, AL 36615–1390 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Carolyn Beatty, Operations Department, Marine Safety Office Mobile, AL, at (251) 441–5771.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and

address, identify the docket number for this rulemaking [COTP Mobile-03–013], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Mobile at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. The President has continued the national emergency he declared following those attacks (67 FR 58317, Sept. 13, 2002) (continuing the emergency declared with respect to terrorist attacks) and (67 FR 59447, Sept. 20, 2002) (continuing emergency with respect to persons who commit, threaten to commit or support terrorism). The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the terrorist attacks (E.O. 13,273, 67 FR 56215, Sept. 3, 2002) (security of U.S. endangered by disturbances in international relations of U.S and such disturbances continue to endanger such relations). National security and intelligence officials have warned that future terrorist attacks against civilian targets are anticipated. In response to these terrorist acts and warnings, heightened awareness for the security and safety of all vessels, ports, and harbors is necessary.

On March 22, 2003, the Captain of the Port Mobile established a temporary security zone for the Chevron Pascagoula Refinery (COTP Mobile-03–009, 68 FR 23594). That temporary final rule was published in the **Federal Register** on May 5, 2003, and expires on September 22, 2003.

The Captain of the Port has determined there is a need for this security zone to remain in effect indefinitely because of the continued threat of terrorism and the nature of the material handled at the refinery. The proposed rule would establish a permanent security zone identical to the existing temporary zone.

Discussion of Proposed Rule

A security zone is proposed for all waters of Bayou Casotte east of a line drawn from position 30°19′09″ N, 88°30′63″ W; to position 30°20′42″ N, 88°30′51″ W, at the Chevron Pascagoula Refinery. These coordinates are based upon [NAD 83]. All persons and vessels would be prohibited from entering or remaining in this zone without permission of the Captain of the Port Mobile or a designated representative.

The zone is designed to increase protection around the Chevron Pascagoula Refinery in Pascagoula, MS. It increases the opportunity for detection of a waterborne attack on the facility and consequently enhances public health and safety, providing greater defense and security at this location and its surrounding areas. The location of this security zone will limit access to only the waters immediately adjacent to the facility and will permit vessels to safety navigate around the zone. The establishment of this security zone will have minimal impact on maritime traffic in the vicinity of the facility.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This proposed rule would not obstruct the regular flow of vessel traffic and will allow vessel traffic to pass safely around the security zone. Vessels may be permitted to enter the security zone on a case-by-case basis.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Coast Guard is unaware of any small entities that would be impacted by this proposed rule. The navigable channel remains open to all vessel traffic. We have received no comments or objections regarding the existing security zone covering the same area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so they can better evaluate its effects on them and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Carolyn Beatty, Operations Department, Marine Safety Office Mobile, AL, at (251) 441–5771.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of

their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.824 to read as follows:

§ 165.824 Security Zone; Chevron Pascagoula Refinery, Pascagoula, MS.

(a) *Location.* The following area is a security zone: all waters of Bayou Casotte east of a line drawn from position 30°19′09″ N, 88°30′63″ W to position 30°20′42″ N 88°30′51″ W at the Chevron Pascagoula Refinery. These coordinates are based upon [NAD 83].

(b) *Regulations:* (1) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Mobile or a designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port Mobile at telephone number (251) 441–5121 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Mobile or a designated representative.

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

Dated: June 19, 2003.

Gary T. Croot,

Commander, Coast Guard, Acting, Captain of the Port Mobile.

[FR Doc. 03–16972 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 242–0375; FRL–7522–3]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from storage tanks used to store reactive organic compound (ROC) liquids. We are proposing action on a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 6, 2003.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov.*

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building,

1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the date that it was amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Revised	Submitted
ICAPCD	414	Storage of Reactive Organic Compound Liquids	09/14/99	05/26/00

On October 6, 2000, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rules 413 and 414 into the SIP on January 27, 1981 (46 FR 8472).

C. What Is the Purpose of the Submitted Rule Revisions?

- The existing rule is rewritten for clarity.
- The scope of the rule is broadened to cover the storage of all reactive organic liquids, except gasoline, in a greater number of storage tanks.
- Added is an exemption for gasoline storage tanks because they are covered under ICAPCD Rule 415, Transfer and Storage of Gasoline. *See* 67 FR 65873 (October 29, 2002).
- Added is a limited exemption from requirements for vapor loss control devices for an emergency standby tank when the tank is drained or if the operator has obtained a variance for a breakdown of the primary tank.
- Added is a limited exemption from requirements for vapor loss control devices or closure devices for out-of-service or empty storage tanks undergoing cleaning, stock change, tank and roof repair, or removal of contaminated stock.
- Added is a 72-hour exemption from requirements for vapor loss control devices or closure devices for in-service tanks undergoing preventive maintenance, including, but not limited to primary seal inspection, removal or installation of a secondary seal, repairs of regulators, fittings, deck components, hatches, valves, roofs, flame arrestors, or compressors.
- Upgraded are requirements for gaps, seals, and roof covers based on federal standards of performance for volatile organic liquid storage and standards of performance for bulk gasoline terminals.
- Added is a table to specify appropriate vapor pressure and temperature for stored liquids.
- Added are recordkeeping requirements and test methods.
- Added is a compliance schedule for tanks requiring modification to meet the rule requirements. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The ICAPCD regulates a transitional ozone nonattainment area subject to subpart 1 of part D, title I requirements. *See* 40 CFR part 81 and the discussion in the Background section of the TSD. We must require Rule 414 to correct relaxation and enforcement-related deficiencies, but the rule is not required to fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region 9 (August 21, 2001) (the Little Bluebook).
- *Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks,* EPA–450/2–78–047.
- *Control of Volatile Organic Emissions from Petroleum Liquid Storage in Fixed Roof Tanks,* EPA–450/2–77–036.
- *State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown,* EPA Office of Air and Radiation and EPA Office of Enforcement and Compliance Assurance (September 20, 1999).

B. Does the Rule Meet the Evaluation Criteria?

This rule improves the SIP by broadening the scope of the rule to cover a greater number of ROC liquids (except gasoline, which is cover by SIP-approved ICAPCD Rule 415) in a greater number of storage tanks by lowering the applicability thresholds for vapor pressure and tank capacity. This rule also improves the SIP by adding testing methods and reporting and recordkeeping requirements. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

These provisions conflict with section 110 and part D of the Act and prevent full approval of the SIP revision:

- 414.A.3.b: This paragraph refers to a variance for a breakdown of a primary

tank. Variances are not allowed under section 110(i) of the CAA unless they are submitted as individual SIP revisions by a State and then approved by EPA.

• 414.A.3.b: The limited exemption to the provisions of subsections B.2 and B.3 for emergency standby tanks when they are drained was apparently intended instead to reference subsections B.2 and B.4, which require vapor loss control devices. The limited exemption represents a relaxation relative to existing SIP ICAPCD Rule 414, which had no such exemption, and may be inconsistent with sections 110(l) and 193 of the CAA. ICAPCD must demonstrate that the exemption complies with sections 110(l) and 193 of the CAA. To demonstrate compliance with sections 110(l) and 193, EPA recommends that ICAPCD review and revise this subsection of ICAPCD Rule 414 to be consistent with the principles set forth in EPA's excess emissions policy. This policy represents EPA's interpretation of how SIP rules can account for malfunction, start-up and shutdown conditions while continuing to provide for attainment or maintenance of the NAAQS in accordance with the relevant provisions under the CAA that govern SIP revisions (sections 110(l) and 193) as well as the relevant provisions that govern general SIP enforceability (sections 110(a)(2)(A) and 302(k)). EPA would approve a SIP revision that complies with the excess emissions policy, but EPA may also approve a revision that follows a different approach to addressing malfunction, start-up and shutdown conditions so long as ICAPCD can demonstrate that its preferred approach does not interfere with attainment or maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

• 414.A.3.c: The limited exemption to the provisions of sections C, D, E, and F for out-of-service or empty storage tanks while they are undergoing cleaning, stock change, or tank or roof repairs, represents a relaxation relative to existing SIP ICAPCD Rule 414, which had no such exemption, and may be inconsistent with sections 110(l) and 193 of the CAA. To demonstrate compliance with sections 110(l) and 193, EPA recommends that ICAPCD review and revise this subsection of ICAPCD Rule 414 to be consistent with the principles set forth in EPA's excess emissions policy. This policy represents EPA's interpretation of how SIP rules can account for malfunction, start-up and shutdown conditions while continuing to provide for attainment or maintenance of the NAAQS in accordance with the relevant provisions under the CAA that govern SIP revisions (sections 110(l) and 193) as well as the relevant provisions that govern general SIP enforceability (sections 110(a)(2)(A) and 302(k)). EPA would approve a SIP revision that complies with the excess emissions policy, but EPA may also approve a revision that follows a different approach to addressing malfunction, start-up and shutdown conditions so long as ICAPCD can demonstrate that its preferred approach does not interfere with attainment or maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

• 414.A.3.d.7: This subparagraph allows the Director discretion to extend the time of non-applicability of sections C, D, E, and F in a preventive maintenance beyond a 72-hour limit. Such discretion is inconsistent with the SIP-revision process described in section 110(a) of the CAA and the enforceability requirements of section (a)(2)(A).

• 414.J: The issue date of the ASTM methods cited in this section should preferably be updated. For example, D–287–82 could be D–287–92; D–323–82 could be D–323–94; D–2879–86 could be D–2879–96; and D–4057–88 could be D–4057–95.

• 414.J.1.c.6 and 414.J.1.c.7: The sampling methods in these paragraphs relate to the determination of vapor pressure where the API gravity of the oil is <20 degrees API gravity. However, the introductory paragraph J.1.c applies to >20 degrees API gravity. A new introductory paragraph is needed for <20 degrees API gravity. Furthermore, experience at the SBCAPCD has shown that these sampling methods do not work well in practice for <20 degrees API gravity, due to excessive viscosity of the sample. SBCAPCD recommends the HOST method, *Test Method for Vapor Pressure of Reactive Organic Compounds in Heavy Crude Oil Using Gas Chromatography*, for <20 degrees API gravity. See SBCAPCD Rule 326.K.1.b.

• 414.Table 1: There is an error in the maximum temperature for toluene, since the maximum temperature should be higher for 1.5 psia than for 0.5 psia.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient, and hereby supercedes the related existing SIP Rules ICAPCD 413 and 414. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the CAA unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the ICAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory

action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). 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.'' Under 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 the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, 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.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It 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. Thus, Executive Order 13175 does not apply to this rule.

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

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.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental 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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available

and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: June 19, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–16926 Filed 7–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2034; MB Docket No. 03–140; RM–10697]

Radio Broadcasting Services; Avoca, Freeland and Wilkes-Barre, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Entercom Wilkes-Barre Scranton, LLC (''Petitioner''), requesting the reallotment of Channel 276A from Freeland, PA to Avoca, PA, and modification of the license for Station WAMT accordingly. The coordinates for Channel 276A at Avoca are 41–18–20 and 75–45–38. Petitioner further requests the reallotment of Channel 253B, Station WKRZ, from Wilkes-Barre, PA to Freeland, PA, as a replacement service for Station WAMT. The coordinates for Channel 253B at Freeland are 41–11–56 and 75–49–06. The proposal complies with the provisions of section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channels 276A at Avoca and 253B at Freeland. Canadian concurrence will be requested for the proposed reallotments.

DATES: Comments must be filed on or before August 14, 2003, and reply comments on or before August 29, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Brian M. Madden, John W. Bagwell, Leventhal Senter & Lerman PLLC, 2000 K Street, NW., Suite 600, Washington, DC 20006–1809.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–140, adopted June 18, 2003, and released June 23, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *see* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by removing Channel 276A and by adding Channel 253B at Freeland, by removing Channel 253B at Wilkes-Barre, and by adding Avoca, Channel 276A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–16962 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 129
Monday, July 7, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Annual List of Newspapers To Be Used by the Alaska Region for Publication of Legal Notices of Proposed Actions and Legal Notices of Decisions Subject to Administrative Appeal

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Alaska Region will use to publish legal notice of all decisions subject to appeal under 36 CFR part 215 and to publish legal notices for public comment on actions subject to the notice and comment provisions of 36 CFR part 215, as updated on June 4, 2003. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notice of actions subject to the public comment and decisions subject to appeal under 36 CFR part 215, thereby allowing them to receive constructive notice of a decision or proposed action, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

ADDRESSES: Robin Dale, Alaska Region Group Leader for Appeals, Litigation and FOIA; Forest Service, Alaska Region; P.O. Box 21628; Juneau, Alaska 99802–1628.

DATES: Publication of legal notices in the listed newspapers begin on July 1, 2003. This list of newspapers will remain in effect until it is superceded by a new list, published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robin Dale, Alaska Region Group Leader for Appeals, Litigation and FOIA; (907) 586–9344.

SUPPLEMENTARY INFORMATION: This notice provides the list of newspapers that Responsible Officials in the Alaska Region will use to give notice of decisions subject to notice, comment, and appeal under 36 CFR part 215. The timeframe for comment on a proposed action shall be based on the date of publication of the legal notice of the proposed action in the newspaper of record identified in this notice. The timeframe for appeal under 36 CFR part 215 shall be based on the date of publication of the legal notice of the decision in the newspaper of record identified in this notice.

The newspapers to be used for giving notice of Forest Service decisions in the Alaska Region are as follows:

Alaska Regional Office

Decisions of the Alaska Regional Forester: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska; and the Anchorage Daily News, published daily in Anchorage, Alaska.

Chugach National Forest

Decisions of the Forest Supervisor and District Rangers: Anchorage Daily News, published daily in Anchorage, Alaska.

Tongass National Forest

Decisions of the Forest Supervisor: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Craig District Ranger, the Ketchikan/Misty District Ranger, and the Thorne Bay District Ranger: Ketchikan Daily News, published daily except Sundays and official holidays in Ketchikan, Alaska.

Decisions of the Admiralty Island National Monument Ranger, the Juneau District Ranger, the Hoonah District Ranger, and the Yakutat District Ranger: Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions of the Petersburg District Ranger: Petersburg Pilot, published weekly in Petersburg, Alaska.

Decisions of the Sitka District Ranger: Daily Sitka Sentinel, published daily except Saturday, Sunday, and official holidays in Sitka, Alaska.

Decisions of the Wrangell District Ranger: Wrangell Sentinel, published weekly in Wrangell, Alaska.

Supplemental notices may be published in any newspaper, but the timeframes for making comments or filing appeals will be calculated based upon the date that notices are published in the newspapers of record listed in this notice.

Dated: June 23, 2003.

Denny Bschor,

Regional Forester.

[FR Doc. 03–16993 Filed 7–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Reinstate a Previously Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to request reinstatement of a previously approved information collection, the National Childhood Injury and Occupational Injury Survey of Minority Farm Operators.

DATES: Comments on this notice must be received by September 10, 2003 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: National Childhood Injury and Occupational Injury Survey of Minority Farm Operators.

Previous OMB Control Number: 0535–0235.

Type of Request: Reinstatement of a Previously Approved Information Collection.

Abstract: The National Childhood Injury and Occupational Injury Survey of Minority Farm Operators is designed to: (1) Provide estimates of childhood nonfatal injury incidence and description of injury occurring to children less than 20 years of age who reside, work, or visit farms operated by minorities and (2) describe the occupational injury experience of adult minority farm operators and their workers. Data will be collected by telephone from all 50 states with 25,000 operations receiving a Childhood Injury version only and 25,000 receiving a combined Childhood Injury and Adult Occupational Injury version. Questions will relate to injury problems occurring during the 2003 calendar year. These data will update and enhance existing data series used by the National Institute of Occupational Safety and Health to: (1) Measure the number and rate of childhood injuries associated with minority farming operations and study the specific types of injuries sustained and (2) describe the scope and magnitude of adult occupational injuries associated with minority farming operations. The collection combines the youth and adult occupational injury studies to reduce the number of contacts on the targeted farm population. Reports on the findings of this study will be generated and information disseminated to all interested parties.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 12 minutes per response for the childhood injury questions and 25 minutes for the combined interview. Demographic data will be collected from all respondents although screen-outs will be allowed early in both instruments if no injuries were incurred.

Respondents: Farm Operators.

Estimated Number of Respondents: 50,000.

Estimated Total Annual Burden on Respondents: 10,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, June 17, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03–17041 Filed 7–3–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS)—Cell Phone Use Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 5, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dennis Clark, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 763–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the collection of data via a Cell Phone Use Supplement to be conducted in conjunction with the February 2004 CPS. The Cell Phone Use Supplement is sponsored by the Census Bureau and the Bureau of Labor Statistics . This survey will provide a source of national and state level data on the demographic, social, and economic characteristics of cell phone users and nonusers. These data will help federal data collection agencies to determine if primary cell phone users constitute a new source of nonresponse in telephone surveys. The supplement data also will make it possible to study general nonresponse bias in telephone surveys.

II. Method of Collection

The cell phone use information will be collected by both personal visit and telephone interviews in conjunction with the regular February CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: Not available.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 43,000.

Estimated Time Per Response: 1 minute.

Estimated Total Annual Burden Hours: 717.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182, and Title 29, U.S.C., Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: July 1, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–17047 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 5, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: Obie G. Whichard, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50 (OC), Washington, DC 20230, or via the Internet at *Obie.Whichard@bea.gov* (Telephone: 202–606–9890).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons (Form BE–82) obtains information on U.S. sales to and purchases from unaffiliated foreign persons of financial services. The information gathered is needed, among other purposes, to support U.S. trade policy initiatives and to compile the U.S. international transactions, input-output, and national income and product accounts. No changes are proposed for Form BE–82.

II. Method of Collection

Form BE–82 will be sent each year to potential respondents in January and responses are due by March 31. A U.S. person that provides financial services and has financial services transactions with unaffiliated foreign persons is required to report if total sales or purchases of covered financial services transactions are more than $10 million during the covered year. A U.S. person that receives a form but is not required to report data must file an exemption claim.

III. Data

OMB Number: 0608–0063.

Form Number: BE–82.

Type of Review: Regular submission.

Affected Public: U.S. businesses or other for-profit institutions engaging in financial services transactions with unaffiliated foreign persons.

Estimated Number of Respondents: 300 annually.

Estimated Time Per Response: 7 hours.

Estimated Total Annual Burden: 2,100 hours.

Estimated Total Annual Cost: $63,000 (based on an estimated reporting burden of 2,100 hours and estimated hourly cost of $30).

Respondent's Obligation: Mandatory.

Legal Authority: Title 22, U.S.C., Sections 3101–3108.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 1, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–17046 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposal To Collect Information on Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 5, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: Obie G. Whichard, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50 (OC), Washington, DC 20230, or via the Internet at *Obie.Whichard@bea.gov* (Telephone: 202–606–9890).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Survey of Royalties, License Fees, and Other Receipts and Payments for Intangible Rights Between U.S. and Unaffiliated Foreign Persons (Form BE–93) obtains information on transactions in intangible rights between U.S. and unaffiliated foreign persons. The information gathered is needed, among other purposes, to support U.S. trade policy initiatives and to compile the U.S. international transactions, input-output, and national income and

product accounts. No changes are proposed for Form BE–93.

II. Method of Collection

Form BE–93 will be sent each year to potential respondents in January and responses are due by March 31. A U.S. person that has transactions in intangible rights with unaffiliated foreign persons is required to report if total covered receipts or covered payments are more than $2 million during the covered year. A U.S. person that receives a form but is not required to report data must file an exemption claim.

III. Data

OMB Number: 0608–0017.

Form Number: BE–93.

Type of Review: Regular submission.

Affected Public: U.S. businesses or other for-profit institutions.

Estimated Number of Respondents: 650 annually.

Estimated Time Per Response: 4 hours.

Estimated Total Annual Burden: 2,600 hours.

Estimated Total Annual Cost: $78,000 (based on an estimated reporting burden of 2,600 hours and estimated hourly cost of $30).

Respondent's Obligation: Mandatory.

Legal Authority: Title 22, U.S.C., Sections 3101–3108.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 1, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–17049 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Data Sharing Activity

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The Bureau of Economic Analysis (BEA) proposes to provide to the Bureau of the Census (Census Bureau) data collected from the Benchmark Survey of Foreign Direct Investment in the United States—1997 and the Benchmark Survey of U.S. Direct Investment Abroad—1999 for statistical purposes exclusively. In accordance with the requirement of Section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), we are providing the opportunity for public comment on this data-sharing action. Through the use of these shared data, the Census Bureau will augment its existing research and development (R&D)-related data collected in the Survey of Industrial Research and Development, which is funded by the National Science Foundation (NSF). The Census Bureau will also identify data quality issues arising from reporting differences in the BEA and Census Bureau surveys and improve its survey sample frames. The NSF will be provided non-confidential aggregate data (public use) and reports that have cleared BEA and Census Bureau disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

DATES: Written comments must be submitted on or before September 5, 2003.

ADDRESSES: Please direct all written comments on this proposed program to the Director, Bureau of Economic Analysis (BE–1), Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this proposed program should be directed to Ned Howenstine, Chief, Research Branch, International Investment Division, Bureau of Economic Analysis (BE–50), Washington, DC 20230, by phone on (202) 606–9845 or by fax (202) 606–5318.

SUPPLEMENTARY INFORMATION:

Background

CIPSEA (Pub. L. 107–347, Title V) and the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 United States Code (U.S.C.) 3101–3108) allow BEA and the Census Bureau to share certain business data for exclusively statistical purposes. Section 524(d) of the CIPSEA requires a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment).

Section 524(d) also requires us to provide information about the terms of the agreement for data sharing. For purposes of this notice, BEA has decided to group these terms by three categories. The categories are:

- Shared data.
- Statistical purposes for the shared data.
- Data access and confidentiality.

Shared Data

BEA proposes to provide the Census Bureau with data collected from the Benchmark Survey of Foreign Direct Investment in the United States—1997 and the Benchmark Survey of U.S. Direct Investment Abroad—1999. The agreement also calls for the Census Bureau to share data collected from the 1997 and 1999 Surveys of Industrial Research and Development with BEA. A separate notice (68 FR 33094, June 3, 2003) addresses this issue.

BEA will provide the Census Bureau with only those data items necessary to link records from the two benchmark surveys with records from the Census Bureau's Surveys of Industrial Research and Development. The Census Bureau will use these data for statistical purposes exclusively. Through record linkage, the Census Bureau will augment its existing R&D-related data, identify data quality issues arising from reporting differences in the Census Bureau and BEA surveys, and improve its survey sample frames.

Statistical Purposes for the Shared Data

The data collected from the Benchmark Survey of Foreign Direct Investment in the United States—1997 and the Benchmark Survey of U.S. Direct Investment Abroad—1999 are used to estimate expenditures on research and development performed by U.S. affiliates of foreign companies, foreign affiliates of U.S. companies, and the foreign affiliates' U.S. parent companies, R&D employment, and other statistics on the financial structure and operations of these companies. Statistics from the Benchmark Survey of Foreign Direct Investment in the United States—1997 were published in *Foreign Direct Investment in the United States: Final Results From the 1997 Benchmark Survey;* statistics from the Benchmark Survey of U.S. Direct Investment Abroad—1999 will be published in *U.S.*

Direct Investment Abroad: Final Results From the 1999 Benchmark Survey (forthcoming). All data are collected under sections 3101–3108, of Title 22 U.S.C.

Data Access and Confidentiality

Title 22, U.S.C. 3104 protects the confidentiality of these data. The data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. Any results of this research are subject to BEA disclosure protection. All Census Bureau employees with access to these data will become BEA Special Sworn Employees—meaning that they, under penalty of law, must uphold the data's confidentiality. Selected NSF employees will provide BEA with expertise on the aspects of R&D performance in the United States and by U.S. companies abroad; these NSF consultants assisting with the work at the BEA also will become BEA Special Sworn Employees. No confidential data will be provided to the NSF. To further safeguard the confidentiality of the data, BEA will conduct an Information Technology security review of the Census Bureau prior to the commencement of the project. Any results of this research are subject to BEA disclosure protection.

Dated: June 26, 2003.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 03–17097 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–831]

Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Reviews: Fresh Garlic from the People's Republic of China.

EFFECTIVE DATE: July 7, 2003.

SUMMARY: In May 2003 the Department of Commerce received eight requests to conduct new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China. One of these requests was withdrawn. We have determined that the seven remaining requests meet the statutory and regulatory requirements for the initiation of 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, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the People's Republic of China (PRC) was published on November 16, 1994. In May 2003 we received eight requests to conduct new shipper reviews of the antidumping duty order.

On May 29, 2003, we received a request for a new shipper review from Linyi Sanshan Import & Export Trading Co., Ltd. (Linyi Sanshan). In its request for review, Linyi Sanshan submitted documentation establishing the date of sale and entry for the transaction on which it based the request for a new shipper review. The dates of sale and entry on the submitted documentation did not fall within the period of review (POR), however, so on June 10, 2003, we issued a letter to Linyi Sanshan in which we stated that we did not intend to initiate a new shipper review it requested. On June 12, 2003, Lini Sanshan provided documentation establishing that the actual date on which the subject merchandise entered the United States for consumption is during the POR.

On May 29, 2003, we also received requests for new shipper reviews from Sunny Imp & Exp Limited (Sunny), Linshu Dading Private Agricultural Products Co., Ltd. (Linshu), and Tancheng County Dexing Foods Co., Ltd. (Tancheng). Further, on May 30, 2003, we received requests for new shipper reviews from Jinxiang Dong Yun Freezing Storage Co., Ltd. (Dong Yun), Shanghai Ever Rich Trade Company (Ever Rich), Taian Ziyang Food Co., Ltd. (Ziyang), and H&T Trading Company (H&T). H&T withdrew its request for a new shipper review on June 10, 2003.

Linyi Sanshan, Sunny, Dong Yun, Tancheng, and Ziyang certified that they both grew and exported the subject merchandise on which they based their requests for a new shipper review. Ever Rich and Linshu Dading certified that they exported the subject merchandise on which they based their requests for a new shipper review, but that they did not grow the subject merchandise. Specifically, Ever Rich certified that Pizhou Guangda Import and Export Corp., Ltd. (Pizhou Guangda), grew the subject merchandise it exported, and Linshu Dading certified that Jinxiang County Jinda Agricultural Industrial Trading Co., Ltd. (Jinxiang Jinda), grew the subject merchandise it exported.

Between June 12 and June 27, 2003, Linyi Shanshan, Sunny, Linshu Dading, Tancheng, Dong Yun, Ever Rich, and Ziyang resubmitted their requests for new shipper reviews to correct certain deficiencies (*e.g.*, over-bracketing of public information) that we identified in their submissions.

Initiation of New Shipper Reviews

Pursuant to 19 CFR 351.214(b)(2)(i), Linyi Shanshan, Sunny, Linshu Dading, Tancheng Dexing, Dong Yun, Ever Rich, and Ziyang certified that they did not export subject merchandise to the United States during the period of investigation (POI). In addition, pursuant to 19 CFR 351.214(b)(2)(ii)(B), Pizhou Guangda and Jinxiang Jinda, the growers of the garlic exported by Ever Rich and Linshu Dading, respectively, provided certifications that they did not export the subject merchandise to the United States during the POI.

Pursuant to 19 CFR 351.214(b)(2)(iii)(A), each of the seven exporters, Linyi Sanshan, Sunny, Linshu Dading, Tancheng, Dong Yun, Ever Rich, and Ziyang, certified that, since the initiation of the investigation, they have never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), each of the above-mentioned companies also certified that their export activities were not controlled by the central government.

In addition to the certifications described above, the companies submitted documentation establishing the following: (1) the date on which they first shipped the subject merchandise for export to the United States and the date on which the subject merchandise was first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment and the volume of subsequent shipments; (3) the date of their first sale to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d)(1), we are initiating new shipper reviews for shipments of fresh garlic from the PRC:

(1) Grown and exported by Sunny, Linyi Sanshan, Dong Yun, Tancheng, and Ziyang;

(2) Grown by Pizhou Guangda and exported by Ever Rich;

(3) Grown by Jinxiang Jinda and exported by Linshu Dading.

The POR is November 1, 2002, through April 30, 2003. See 19 CFR 351.214(g)(1)(i)(A). We intend to issue final results of these reviews no later than 270 days from the date of initiation. See section 751(a)(2)(B)(iv) of the Act.

Because Linyi Sanshan, Sunny, Dong Yun, Tancheng, and Ziyang have certified that they both grew and exported the subject merchandise on which they based their request for a new shipper review, we will instruct the Bureau of Customs and Border Protection (Customs) 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 both grown and exported by these companies until the completion of the new shipper reviews. With respect to Ever Rich and Linshu Dading, they have certified that they exported but did not grow the subject merchandise on which they based their request for a new shipper review (*i.e.*, Pizhou Guangda certified that it grew the subject merchandise exported by Ever Rich and Jinxiang Jinda certified that it grew the subject merchandise exported by Linshu Dading). Therefore, until completion of the new shipper reviews, we will instruct Customs to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for entries of subject merchandise grown by Pizhou Guangda and exported by Ever Rich or grown by Jinxian Jinda and exported by Linshu Dading.

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)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: June 30, 2003.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–17064 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–817]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Thailand in response to requests by petitioners, National Steel Corporation, United States Steel Corporation, and Nucor Corporation. The review covers shipments to the United States for the period May 3, 2001 through October 31, 2002, by Sahaviriya Steel Industries Public Company Limited (''SSI''), Nakornthai Strip Mill Public Co., Ltd. (''Nakornthai''), and Siam Strip Mill Public Co., Ltd (''Siam Strip''). For the reasons discussed below, we are extending the preliminary results of this administrative review by 120 days, to no later than December 1, 2003.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier at 202–482–1394, or Abdelali Elouaradia at 202–482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel (*see Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562). On November 1, 2002, the Department published a notice of opportunity to request an administrative review for this order covering the period May 3, 2001 through October 31, 2002 (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 67 FR 66612). On November 27, 2002, SSI requested a review in accordance with 19 CFR 351.213(b)(2), and the petitioners requested a review of SSI, Nakornthai, and Siam Strip under 19 CFR 351.213(b)(1). The petitioners are Nucor Corporation, National Steel Corporation, and United States Steel Corporation. The Department initiated these reviews on December 26, 2002 (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 78772).

On February 14, 2003, petitioners filed a letter alleging that a particular market situation existed in Thailand during the period of review. Petitioners filed additional comments regarding the particular market situation on March 17, 2003, and April 24, 2003. SSI filed comments and its responses to the Department's supplemental questionnaires regarding the particular market situation on March 4, 2003, March 28, 2003, and June 20, 2003. On March 12, 2003, and May 6, 2003, petitioners alleged that SSI may be affiliated with one of the trading companies SSI used to sell its products in the United States and one of SSI's slab suppliers. The preliminary results are currently due not later than August 4, 2003.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the last day of the anniversary month of the order for which the administrative review was requested. Because of the complexity of the particular market situation and affiliation issues in this case, it is not practicable for the Department to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. The Department requires additional time to evaluate information submitted by SSI and petitioners regarding the particular market situation and affiliation issues.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) of the Department's regulations, the Department is extending the time limits for the preliminary results by 120 days, to no later than December 1, 2003.

Dated: June 30, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–17063 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and New Shipper Review, and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 2001–2002 administrative review and new shipper review, and partial rescission of review.

SUMMARY: The Department of Commerce is currently conducting the second administrative review and a new shipper review of the antidumping duty order on non-frozen apple juice concentrate from the People's Republic of China, covering the period June 1, 2001, through May 31, 2002.

The new shipper review covers one exporter: Gansu Tongda Fruit Juice and Beverage Company. We preliminarily determine that sales of non-frozen apple juice concentrate from the People's Republic of China were not made below normal value during the period of review by Gansu Tongda Fruit Juice and Beverage Company.

The administrative review covers five exporters: Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., Yantai Oriental Juice Co., Ltd., SDIC Zhonglu Fruit Juice Co., Ltd., Sanmenxia Lakeside Fruit Juice Co., Ltd., and Changsha Industrial Products & Minerals Import and Export Co., Ltd. We preliminarily determine that sales of non-frozen apple juice concentrate from the People's Republic of China were not made below normal value during the period of review by Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., Yantai Oriental Juice Co., Ltd., SDIC Zhonglu Fruit Juice Co., Ltd., and Sanmenxia Lakeside Fruit Juice Co., Ltd.

Changsha Industrial Products & Minerals Import and Export Co., Ltd. did not respond to the Department's questionnaire and will receive the facts available rate. See ''*Use of Fact Otherwise Available*'' section, below.

If these preliminary results are adopted in our final results of revivew, we will instruct the U.S. Bureau of Customs and Border Protection to liquidate appropriate entries for Gansu Tongda Fruit Juice and Beverage Company without regard for antidumping duties. However, with respect to Shaanxi Haisheng Fresh Fruit Juice Co., Ltd., Yantai Oriental Juice Co., Ltd., SDIC Zhonglu Fruit Juice Co., Ltd., Sanmenxia Lakeside Fruit Juice Co., Ltd., and Changsha Industrial Products & Minerals Import and Export Co., Ltd., there is an injunction in place from the investigation and ongoing litigation. Therefore, entries will not be liquidated until the conclusion of the litigation.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3534, (202) 482–3798 or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The period of review (''POR'') is June 1, 2001 through May 31, 2002.

Background

On June 5, 2000, the Department published in the **Federal Register** (65 FR 35606) the antidumping duty order on certain non-frozen apple juice concentrate (''AJC'') from the People's Republic of China (''PRC''). On June 5, 2002, the Department notified interested parties of the opportunity to request an administrative review of this order (67 FR 38640). On June 24, 2002, Shaanxi Haisheng Fresh Juice Co., Ltd. (''Haisheng''), Yantai Oriental Juice Co., Ltd. (''Oriental''), and SDIC Zhonglu Fruit Juice Co., Ltd. (''Zhonglu'') requested an administrative review. On June 28, 2002, Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top, Inc., (collectively, ''the petitioners''), requested that the Department conduct an administrative review of the antidumping order for Haisheng, Sanmenxia Lakeside Fruit Juice Co., Ltd. (''Lakeside''), Zhonglu, Oriental, Qingdao Nannan Foods Co., Ltd. (''Nannan''), Xian Asia Qin Fruit Co., Ltd. (''Xian Asia''), Xian Yang Fuan Juice Co., Ltd. (''Xian Yang''), Changsha Industrial Products & Minerals Import and Export Co., Ltd. (''Changsha''), Shandong Foodstuffs Import and Export Corporation (''Shandong''), Shaanxi Hengxing Fruit Juice Co., Ltd. (''Hengxing''), Shaanxi Machinery and Equipment Import and Export Corporation (''SAAME''), Shaanxi Gold Peter Natural Drink Co., Ltd. (''Gold Peter''), and Yantai North Andre Juice Co., Ltd. (''North Andre'').

On July 10, 2002, North Andre objected to the petitioners' request for an administrative review of North Andre because it received a zero percent margin in the less-than-fair-value (''LTFV'') investigation, and thus, is excluded from the order. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Non-Frozen Apple Juice From the People's Republic of China,* 65 FR 35606 (June 5, 2000 (''*Final Determination*''). Therefore, the Department did not initiate a review for North Andre.

In accordance with 19 CFR 351.221(b)(1), on July 24, 2002, we published a notice of initiation of this antidumping duty administrative review (67 FR 48435) for Zhonglu, Oriental, Lakeside, Changsha, Haisheng, Nannan, Xian Asia, Xian Yang, Shandong, Hengxing, SAAME, and Gold Peter.

On June 25, 2002, the Department received a request from Gansu Tongda Fruit Juice and Beverage Company (''Gansu Tongda'') to conduct a new shipper review. On July 24, 2002, we initiated a new shipper review of the antidumping order on AJC from the PRC. *See Non-Frozen Apple Juice Concentrate From the People's Republic of China: Initiation of Antidumping New Shipper Review,* 67 FR 48440. On July 26, 2002 Gansu Tongda waived the time limits applicable to the new shipper review and agreed to permit the Department to conduct the new shipper review concurrently with the annual administrative review for 2001–2002.

On August 2, 2002, the Department sent questionnaire to all respondents and to the Chinese Chamber of Commerce for the Import and Export of Foodstuffs, Native Produce & Animal By-Products (''China Chamber''), with a copy to the Embassy of the PRC in the United States, requesting that the China Chamber also forward the questionnaire to the respondents named in the initiation notice.

Following the issuance of questionnaire, the following parties reported that they had no shipments during the POR: Shandong, Nannan, SAAME, Hengxing, Xian Asia, Gold Peter, and Xian Yang. See ''*Partial Rescission*'' section, below.

In September 2002, we received responses the questionnaire from the following companies: Haisheng, Lakeside, Oriental, Zhonglu and Gansu Tongda. Changsha did not respond to the Department's original questionnaire. See ''*Use of Fact Otherwise Available*'' section, below.

On August 14, 2002, April 4, 2003, and June 6, 2003, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received responses from Haisheng, Oriental, Zhonglu and Gansu Tongda on May 5, 2003.

We issued supplemental questionnaire to Lakeside, Haisheng, Zhonglu, Oriental and Gansu Tongda, and received responses by January 10, 2003.

On January 24, 2003, the Department published a notice postponing the preliminary results of this review until June 30, 2003. *See Extension of Time Limit for the Preliminary Results of the 2001–2002 Antidumping Duty Administrative Review and New Shipper Review,* 68 FR 3510.

We note that the Petitioners have not made any written submissions in this proceeding.

Scope of the Order

The product covered by this order is certain non-frozen apple juice concentrate (''AJC''). Certain AJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Shandong, Gold Peter, Nannan, SAAME, Hengxing, Xian Asia, and Xian Yang, which reported that they made no shipments of subject merchandise during this POR. We examined shipment data furnished by the U.S. Bureau of Customs and Border Protection and are satisfied that the record does not indicate that there were U.S. entries of subject merchandise from these companies during the POR.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy (''NME'') country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC AJC industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

Absence of De Jure Control

Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Haisheng, Zhonglu, Oriental, Lakeside and Gansu Tongda have placed a number of documents on the record to demonstrate absence of de jure government control, including ''Foreign Trade Law of the People's Republic of China'' (''Foreign Trade Law''), ''Company Law of the PRC'' (''Company Law''), the ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations'' (''Administrative Regulations''), the ''Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures'' (''Joint Ventures Law''), and the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People'' (''Industrial Enterprise Law''). The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of de jure control. (*See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China,* 60 FR 29571 (June 5, 1995); *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From the People's Republic of China,* 63 FR 72255 (December 31, 1998) (''*Mushrooms*'')). We have no new information in this proceeding which would cause us to reconsider this determination.

The Company Law is designed to meet the PRC's needs of establishing a modern enterprise system, and to maintain social and economic order. The Department has noted that the Company Law supports an absence of de jure control because of its emphasis on the responsibility of each company for its own profits and losses, thereby decentralizing control of companies.

In keeping with the Company Law, the Administrative Regulations safeguard social and economic order, as well as establishing an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of de jure control by requiring companies to bear civil liabilities independently, thereby decentralizing control of companies.

The Joint Ventures Law states that Chinese and foreign parties shall share earnings and bear risks jointly. An analysis of the Joint Ventures Law by the Department further indicates lack of de jure control for Oriental, Xian Asia, and Zhonglu, those respondents actually subject to this law.

The Industrial Enterprises Law provides that enterprises owned by ''the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. As in prior

PRC cases, the Department has analyzed the Industrial Enterprises Law and found that this law establishes mechanisms for private control of companies, which indicates an absence of de jure control. *See Pure Magnesium From the People's Republic of China: Final Results of New Shipper Review,* 63 FR 3085, 3086 (January 21, 1998).

According to the respondents, AJC exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that AJC exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that the producers/exporters have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers and without government interference.

Accordingly, we preliminarily determine that there is an absence of de jure government control over export pricing and marketing decisions of the respondents.

Absence of De Facto Control

De facto absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; (4) whether each exporter has autonomy from the government regarding the selection of management (*See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589).

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. (*See Mushrooms,* 63 FR at 72255). Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department has reviewed the record in this case and notes that each respondent: (1) Establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; (4) retains the proceeds from export sales and uses profits according to its business needs without any restrictions; and (5) does not coordinate or consult with other exporters regarding pricing decisions.

The information on the record supports a preliminary finding that there is an absence of de facto governmental control of the export functions of these companies. Consequently, we preliminarily determine that all responding exporters have met the criteria for the application of separate rates.

Changsha did not submit a response to the Department's antidumping duty questionnaire, including the separate rates section. We therefore preliminarily determine that Changsha did not establish its entitlement to a separate rate in this review and, therefore, is presumed to be part of the PRC NME entity and, as such, is subject to the PRC country-wide rate. *See* the ''*Use of Facts Otherwise Available*'' section, below.

PRC-Wide Rate and Use of Facts Otherwise Available

As noted above, Changsha is appropriately considered part of the PRC-wide entity. This entity did not respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) Withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Because the PRC entity did not respond to the Department's questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate (*See, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufactures/Exporters: Certain Preserved Mushrooms from the People's Republic of China,* 65 FR 50183, 50184 (August 17, 2000) (for a more detailed discussion, *See Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms for the People's Republic of China,* 65 FR 40609, 40611 (June 30, 2000)); *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China,* 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review,* 62 FR 2655 (January 17, 1997) (for a more detailed discussion, *See Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy,* 61 FR 36551, 36552 (July 4, 1996)). Because the PRC entity provided no information, sections 782(d) and (e) are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated full.'' *See* Statement of Administrative Action (''SAA)'' accompanying the URAA, H.Doc. No. 103–316, at 870 (1994).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a ''full explanation and suggested alternative forms.'' On August 2, 2002, the Department transmitted its questionnaire to Changsha via priority mail. We confirmed with the delivery company that this transmission was received and signed for by Changsha personnel on August 6, 2002. Changsha did not submit a response to our questionnaire by the deadline established for such submissions. On December 2, 2002, the Department faxed and sent a letter by priority mail to Changsha asking whether the company had received the August 2, 2002, questionnaire, and whether it had, in fact, decided not to comply with our requests for information. The Department received no responses from Changsha personnel to either the letter or the facsimile. Therefore, we determine that the PRC entity failed to cooperate to the best of its ability, making the use of an adverse inference appropriate.

In this proceeding, in accordance with Department practice (*See, e.g.,*

Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors From the People's Republic of China, 64 FR 61581, 61584 (November 12, 1999); *Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China,* 64 FR 39115 (July 21, 1999); and *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 65 FR 33295 (May 23, 2000) (for a more detailed discussion, *See Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China,* 64 FR 39115 (July 21, 1999)), as adverse facts available, we have preliminarily assigned to the PRC entity (which includes Changsha) the PRC-wide rate of 51.74 percent, which is the PRC-wide rate established in the LTFV investigation (*See Final Determination*) and the highest dumping margin determined in any segment of this proceeding. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors, From Taiwan,* 63 FR 8909, 8932, (February 23, 1998).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' The Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value (*id.*). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This procedure generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico,* 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). We have determined that there is no evidence on the record which would render the application of the petition margin inappropriate. Therefore, we consider the petition information relevant for this proceeding.

Furthermore, in the underlying LTFV investigation, we established the reliability of the petition margin (*See Final Determination*). As there is no information on the record of this review that demonstrates that the petition rate is not reliable for use as the adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for the PRC-wide rate to be applied in this review to exports of subject merchandise by the PRC entity (which includes Changsha).

Export Price and Constructed Export Price

For certain sales made by Haisheng and Zhonglu to the United States, we used constructed export price (''CEP'') in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by Ganus Tongda, Oriental, and Lakeside, and certain sales made by Haisheng and Zhonglu, we used export price (''EP''), in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not warranted by other circumstances.

We calculated EP based on the various prices to unaffiliated purchasers, as appropriate. In accordance with section 772(c) of the Act, we deducted from these prices, where appropriate, amounts for U.S. freight forwarder fees, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, other U.S. transportation expense, U.S. customs duty (including merchandise processing and harbor maintenance fees), and U.S. warehousing. We valued the deductions for foreign inland freight and brokerage and handling using surrogate data, which were based on Indian freight costs. (We selected Poland as the surrogate country for the reasons explained in the ''*Normal Value*'' section of this notice, below. However, where we were unable to find Polish data to value other miscellaneous factors of production, we have valued these inputs using public information on the record for India, one of the comparable economies identified by the Office of Policy.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using surrogate value data (amounts charged by market-economy providers). However, when some or all of a specific company's ocean freight or marine insurance was provided directly by market economy companies and paid for in a market economy currency, we used the reported market economy ocean freight or marine insurance values for all U.S. sales made by that company. *See* 19 CFR 351.408(c)(1) (regulation for the information used to value factors of production).

We calculated CEP based on the ex-dock (PRC), ex-dock (USA), DDP (delivered duty paid), and delivered prices from Haisheng and Zhongulu's U.S. subsidiaries to unaffiliated customers. In accordance with section 772(c) of the Act, we deducted from the starting price for CEP amounts for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, other U.S. transportation expense, U.S. customs duty (including merchandise processing and harbor maintenance fees), U.S. Freight forwarder fee, U.S. warehousing expense, credit expenses, commissions, direct selling expenses and indirect selling expenses.

In accordance with section 772(d)(1) of the Act, we made further deductions for the following selling expenses that related to economic activity in the United States: Commissions, warranties, credit expenses, indirect selling

expenses (including inventory carrying costs), and other direct selling expenses. In accordance with section 772(d)(3) of the Act, we also deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production methodology if: (1) The subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with section 773(c) of the Act and 19 CFR 351.408(c).

Under the factors-of-production methodology, we are required to value, to the extent possible, the NME producer's inputs in a market economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose Poland as the primary surrogate, a significant producer of the comparable merchandise, apple juice concentrate, on the basis of the criteria set out in sections 773(c)(2)(B) and 773(c)(4) of the Act, and in 19 CFR 351.408(b). Although Poland was not on the Office of Policy's list of most comparable economies, we were unable to establish that these comparable economies were significant producers of comparable merchandise. We have applied surrogate values based on publicly available information from Poland for the major input, juice apples, as well as electricity, factor overhead, SG&A and profit ratios. However, since we were unable to obtain Polish data to value the other miscellaneous factors of production, we have valued these inputs using public information on the record for India, one of the comparable economies identified by the Office of Policy. Because some of the Indian import data was not contemporaneous with the POR, unless otherwise noted, we inflated the data to the POR using the Indian wholesale price indices (''WPI'') published by the International Monetary Fund. *See* the June 30, 2003, Memorandum to Jeff May from Susan Kuhbach ''Surrogate Selection and Valuation—Non-Frozen Apple Juice Concentrate from China (''Surrogate Country Memo'') for a further discussion of our surrogate selection, which is on file in the Department's Central Records Unit in Room B–099 of the main Department building (''CRU'').

Pursuant to the Department's factors-of-production methodology as provided in section 773(c) of the Act and 19 CFR 351.408(c), we valued the respondents' reported factors of production by multiplying them by the following values (for a complete description of the factor values used, see the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results,'' dated June 30, 2003, which is on file in the CRU):

Juice Apples: We have valued juice apples using prices of juice apples in Poland, covering 33 weeks of the POR, which were provided to the Department by the Foreign Agriculture Service (''FAS'') at the U.S. Embassy in Warsaw, Poland. This pricing data was obtained by the FAS from the Polish Foreign Agricultural Markets Monitoring Unit/ Foundation for Aid Programs for Agriculture and the Institute of Agricultural Economics. The average value of these 33 prices is $34.54 per metric ton.

Processing Agents: We valued pectinex enzyme, amylase enzyme, bentonite, diatomite, gelatin, silica gel, and activated carbon for the POR using the World Trade Atlas data for India which is based on data reported by the DGCI&S of the Ministry of Commerce, which also supplies the same data for the Monthly Statistics of the Foreign Trade of India, Volume II: Imports (''Indian import statistics'').

Labor: Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor using the regression-based wage rate for the PRC published by Import Administration on its website.

Electricity and Steam Coal: To value electricity, we used Polish industrial electricity rate data from the Energy Prices & Taxes—Quarterly Statistics (Third Quarter 2000) published by the International Energy Agency. We determined that the most contemporaneous and detailed information on the record for steam coal could be derived from the Energy Data Directory & Yearbook (2001/2002) published by Tata Energy Research Institute (''TERI''). The data for the Indian domestic price of steam coal is contemporaneous with the POR and broken out by useful heat value (''UHV''). The available Polish steam coal data was not broken out by useful heat value.

Factory Overhead, SG&A, and Profit: We derived ratios for factory overhead, SG&A, and profit, using the 2002 financial statement of Agros Fortuna, a public company in Poland that produces products similar to the subject merchandise.

Packing Materials: We calculated values for aseptic bags, plastic liners, labels, wood bins, steel corners, steel bolts, steel bands, steel clips, styrofoam padding, adhesive tape, nails, and cardboard boxes using the World Trade Atlas data for India for the POR. We converted values from a per kilogram to a per piece basis, where necessary.

For steel drums, we could not find a reliable current Indian value. Therefore, we used a 1994 Indonesian price and inflated it using the Indonesian WPI.

Inland Freight Rates: To value truck freight rates, we used an April 2002 article from the Iron and Steel Newsletter, which quotes information derived from the website, *www.infreight.com.* With regard to rail freight, we based our calculation on posted rail rates from the Indian Railways at *www.indianrailways.gov.in.* We calculated an average per kilometer per metric ton rate.

International Freight: We used rates collected from the Descartes online system. Where an individual PRC producer-exporter used a market-economy shipper and paid for the shipping in a market-economy currency, and could provide the complete documentation of the transaction, we calculated an average price for shipping paid by that producer/exporter.

Marine Insurance: We were unable to find a marine insurance rate from an Indian supplier of marine insurance. Furthermore, there is no other information on the record valuing marine insurance from another surrogate country. Therefore, we have used a POR price quote from a U.S. insurance provider, as we have in past PRC cases. *See also* 14th Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China, Memo to Susan Kuhbach, ''Factors of Production Values used for the Preliminary Results,'' July 1, 2002. (This was consistent with the Court of International Trade's decision that the Department must ''determine marine insurance in a manner reasonably related to the value and risks of transporting TRBs.'' *See Peer Bearing Company* v. *U.S.,* 12 F Supp. 2D 445 (CIT 1998)).

Brokerage and Handling: The brokerage and handling amount used in our calculations was derived from an amount charged in Indian Rupees by an Indian shipping company. This figure was taken from the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering, for *Stainless Steel*

Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 48965 (August 10, 2000) (Placed on the record of this proceeding June 30, 2003, as an attachment to the Memorandum to Susan Kuhbach, ''Factors of Production Values Used in the Preliminary Results.'' Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

By-products: Certain respondents reported by-products resulting from production of the subject merchandise. For those respondents that reported their production of apple essence/aroma and/or apple pomace, we have made a deduction for the production of by-products generated during production of AJC. Because we were unable to find reliable Indian values for apple essence or apple pomace, and we are still in the process of looking for a Polish price, we used U.S. prices as the surrogate values because they are the only values on the record of this proceeding. We will continue to look for an appropriate surrogate for purposes of the final results. The value for apple essence/aroma was calculated as a simple average of the various prices reported at the July 1999 ITC hearing and 1999 price quotes provided to the Department by two U.S. brokers of food products. Apple pomace was valued using an April 2000 study published by the University of Georgia. *Preliminary Results of the Review.*

We preliminarily determine that the following dumping margins exist for the period June 1, 2001, through May 31, 2002:

Second Administrative Review

Exporter/Producer	Weighted-average margin percentage
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	0.00
Shandong Zhonglu Juice Group Co., Ltd.	0.00
Yantai Oriental Juice Co., Ltd.	0.00
Sanmenxia Lakeside Fruit Juice Co., Ltd.	0.00
PRC-wide rate (including Changsha Industrial Products & Minerals Import and Export Co., Ltd.)	51.74

New Shipper Review

Exporter	Producer	Weighted-average margin percentage
Gansu Tongda Fruit Juice and Beverage Company.	Gansu Tongda Fruit Juice and Beverage Company.	0.00

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Furthermore, as discussed in 19 CFR 351.309(d)(2), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this administrative review, including the results of its analysis of issuers raised in any such written briefs or hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to the U.S. Bureau of Customs and Border Protection to assess antidumpting duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements for Administrative Review

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above, the cash deposit rates for exporters to the United States by these companies will be the rates for these firms shown above, except that, for exporters with *de minimis* rates *i.e.*, less than 0.50 percent, no deposit will be required; (2) for North Andre, which was excluded from the antidumping duty order, no deposit is required; (3) for exporters previously found to be entitled to a separate rate in a prior segment of the proceedings, and for which no review has been requested, the cash deposit rate will continue to be the rate established for that exporter in the most recent segment of the proceeding; (4) for all other PRC exporters (including Changsha), the cash deposit rate will be 51.74 percent, the PRC country-wide ad-valorem rate; and (5) for all other non-PRC exporters of subject merchandise from the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Cash Deposit Requirements for New Shipper Review

Bonding will no longer be permitted to fulfill security requirements for shipments from Gansu Tongda of AJC from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. Furthermore, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments from Gansu Tongda of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Gansu Tongda, we will require a cash deposit at the rate established in the final results; and (2) for subject merchandise exported by Gansu Tongda but not manufactured by it, the cash deposit will be the PRC countrywide rate (*i.e.,* 51.74 percent).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Act and 19 CFR 351.221(b).

Dated: June 20, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Importer Administration.

[FR Doc. 03–17065 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Notice of Amended Final Results Pursuant to Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping administrative review pursuant to final court decision on stainless steel bar from India.

SUMMARY: On March 18, 2003, in *Carpenter Technology Corp.* v. *the United States*, Court No. 00–09–00447, Slip. Op. 03–28 (CIT 2003), a lawsuit challenging the Department of Commerce's (''the Department'') *Stainless Steel Bar from India; Final Results of Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000) and accompanying Issues and Decision Memorandum (''*Issues and Decision Memorandum*'') (collectively, ''*Final Results*''), the Court of International Trade (''CIT'') affirmed the Department's remand determination and entered a judgment order. As no further appeals have been filed and there is now a final and conclusive court decision in this action, we are amending our *Final Results.*

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Langan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–2613.

SUPPLEMENTARY INFORMATION:

Background

Following publication of the *Final Results*, Carpenter Technology Corp. (''Carpenter''), the petitioner in this case, and Viraj Impoexpo Ltd. (''Viraj''), a respondent in this case, filed lawsuits with the CIT challenging the Department's *Final Results.*

In the *Final Results*, in accordance with section 773(a)(1)(C) of the Tariff Act of 1930, as amended effective January 1, 1995 (''the Act'') by the Uruguay Round Agreements Act (''URAA''), the Department calculated Viraj's antidumping duty margin using third country sales data for normal value because Viraj's home market sales information was incomplete. In using the third country database, the Department was unable to make adjustments for differences in merchandise because, although Viraj cooperated to the best of its ability, it did not report variable cost of manufacture (''VCOM'') data in its third country and U.S. sales databases. *See* section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. Therefore, the Department relied on facts otherwise available to account for these differences. In doing so, the Department matched U.S. sales to third country sales according to size ranges (''banding'') for price comparison purposes. Where banding did not result in an identical match, the Department applied the ''all others'' rate of 12.45 percent calculated in *Stainless Steel Bar from India; Notice of Final Determination of Sales at Less Than Fair Value*, 59 FR 66915 (December 28, 1994) (''*LTFV investigation*''). The ''all others'' rate was calculated in accordance with the Tariff Act of 1930, as amended, pre-URAA.

The Court remanded the use of banding to the Department for further explanation. The Court did not find the Department's matching methodology unreasonable or inconsistent with law and recognized the Department's broad authority to determine and apply a model-matching methodology to determine a relevant ''foreign like product'' under sections 773 and 771(16) of the Act. However, the Court noted the apparent disparate treatment between Viraj and another respondent, Panchmahal Steel, Ltd. The Court found that this ''disparity'' and the Department's language in its *Issues and Decision Memorandum* necessitated a further explanation from the Department of its rationale for banding Viraj's sales.

Additionally, the Court questioned the Department's use of the ''all others'' rate applied to Viraj's unmatched sales. The Court found that the Department's use of a pre-URAA weighted-average ''all others'' rate that contained one margin based entirely on adverse facts available did not constitute non-adverse facts available. As such, the Court concluded that the Department could not apply this ''all others'' rate to Viraj, a cooperative respondent. *See* section 776(b) of the Act.

The *Draft Redetermination Pursuant to Court Remand* (''*Draft Results*'') was released to the parties on September 5, 2002. In its *Draft Results*, the Department clarified to the courts its use of banding and the dissimilar treatment of Viraj and Panchmachal Steel, Ldt. We also reconsidered our use of the ''all others'' rate from the *LTFV investigation* as neutral facts otherwise available where Viraj's U.S. sales did not have an identical match under the banding methodology. We modified our application of neutral facts otherwise available in the margin calculations by substituting for ''all others'' rate the weighted-average dumping margin from Viraj's matched banded sales in order to confirm with the Court's conclusion that the ''all others'' rate was not a reasonable choice as neutral facts otherwise available.

Comments on the *Draft Results* were received from Carpenter on September 13, 2002, and Viraj submitted rebuttal comments on September 18, 2002. On September 30, 2002, the Department responded to the Court's Order of Remand by filing its Final Results of Redetermination pursuant to the Court remand (''*Final Results of Redetermination*''). The Department's *Final Results of Redetermination* was identical to the *Draft Results*.

The CIT affirmed the Department's *Final Results of Redetermination* on March 18, 2003. *See Carpenter Technology Corp.* v. *United States,* Consol. Court No. 00–09–00447, Slip. Op. 03–28.

Amendment to the Final Results

Pursuant to section 516A(e) of the Act, because no further appeals have been filed and there is not a final and conclusive decision in the court proceeding, we are amendment the *Final Results* for the period of review February 1, 1998, through January 31, 1999. The revised weight-averaged dumping margin for Viraj Impoexpo Ltd. is as follows:

Company	Margin (percent)
Viraj Impoexpo Ltd	0.19 (de minimis).

The Department will issue appraisement instructions directly to the U.S. Bureau of Customs and Border Protection (''Customs''). The Department will instruct Customs to revise cash deposit rates and liquidate relevant entries covering the subject merchandise effective April 28, 2003, the date on which the Department published a notice of the Court decision (*see Stainless Steel Bar from India: Notice of Court Decision and Suspension of Liquidation,* 68 FR 22358 (April 28, 2003)).

This notice is issued and published in accordance with section 751(a)(1) of the Act.

Dated: June 26, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–17066 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062003C]

Marine Mammals; File No. 898–1451

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Attractions Hawaii, d.b.a. Sea Life Park, 42–202 Kalanianaole Highway, Waimanalo, Hawaii 96795 (Michael Osborn, Principal Investigator) has been issued an amendment to enhancement Permit No. 898–1451.

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 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 30, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–17061 Filed 7–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; Implementation Date for Uniform Skilled Nursing Facility (SNF) Benefit and Adoption of Medicare Payment Method for Skilled Nursing Facilities

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to announce that TRICARE will implement the Skilled Nursing Facility (SNF) benefit provisions and SNF Prospective Payment System (PPS) effective for SNF admissions on or after August 1, 2003.

DATES: August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, Colorado 80011–9066, telephone (303) 676–3801.

SUPPLEMENTARY INFORMATION: The Department published an interim final rule (67 FR 40597) on June 13, 2002. In part, this rule aligned the TRICARE SNF benefit more closely with the Medicare's SNF benefit and provided for TRICARE's adoption of the Medicare SNF PPS. The interim final rule provided that the rule is effective August 12, 2003, as soon thereafter as the Director, TRICARE Management Activity can effectively and efficiently implement through contract change.

Dated: June 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–16980 Filed 7–3–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Air Force Research Laboratory, Plans and Programs Directorate, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Air Force Research Laboratory announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms or information technology.

DATES: Consideration will be given to all comments received by September 5, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Air Force Research Laboratory, AFRL/XPTC, Bldg 16, Room 107, 2275 D Street, Wright-Patterson AFB, OH 45433–7226.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Air Force Research Laboratory, Corporate Communications Branch at 937–656–9048.

Title: Air Force Research Laboratory Market Research Survey.

Needs and Uses: Air Force Research Laboratory has taken on a major effort to improve laboratory service to its strategic partners in industry, academia and government, as well as readership of its quarterly magazine, *AFRL Technology Horizons*®. As such, it is imperative the Research Laboratory understands customers' current perceptions of the laboratory and the magazine. With this information, the Air Force Research Laboratory will be better able to develop communication strategies for the Air Force Research Laboratory to employ with its strategic partners.

Affected Public: Subscribers to *AFRL Technology Horizons* magazine, and government, industry and academia partners and potential partners in technology transfer, dual use science and technology, small business, small business innovation research, and independent research and development.

Annual Burden Hours: 125.

Number of Respondents: Estimate 1,000 voluntary responses through web-based surveys.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: At two-year intervals.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This survey will serve multiple purposes. It will gauge government, industry and academia's awareness of, familiarity with, attitudes about and feelings toward the Air Force Research Laboratory. It will also gauge what the *AFRL Technology Horizons* readership thinks of the magazine and the Air Force Research Laboratory. The survey asks what they currently know about the laboratory and their experiences with various outreach programs such as technology transfer, small business innovation research, independent research and analysis, and dual use science and technology. The survey also asks magazine readers to identify strengths and weaknesses of the magazine to guide the Air Force Research Laboratory in future changes to the magazine to better meet readers' needs. The survey will allow for comparisons of data to better target communication efforts to effectively communicate Air Force Research Laboratory information to the public. Findings from these surveys of the civilian population also will be compared with similar data to be gathered from the internal Air Force Research Laboratory leadership at approximately the same time, providing a valuable head-to-head comparison of civilians' and Air Force Research Laboratory's leadership perceptions of how well the Air Force Research Laboratory does its job.

Pamela Fitzgerald,

Federal Register Air Force Liaison Officer.

[FR Doc. 03–16994 Filed 7–3–03; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) on the Transformation of the 172nd Infantry Brigade (Separate) to a Stryker Brigade Combat Team (SBCT) at U.S. Army Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The DEIS analyzes the environmental impacts of transforming the 172th Infantry Brigade (Separate) to an SBCT at U.S. Army Alaska. The proposed action would affect changes to force structure and changes to ranges, facilities, and infrastructure designed to meet objectives of Army transformation in Alaska. Proposed locations for changes include Fort Wainwright (FWA), Fort Richardson (FRA), and outlying training areas (*e.g.,* Gerstle River Training Area and Black Rapids Training Site). Proposed areas of activity changes on FWA would include cantonment areas, Tanana Flats Training Area, Yukon Training Area, and Donnelly Training Area (formerly Fort Greely). The proposed action would alter various activities on military and training lands in Alaska. The range of proposed activities include: (1) Stationing of forces within USARAK to achieve mission requirements; (2) construction, renovation, and demolition activies; (3) training to achieve and maintain readiness to perform assigned missions; (4) fielding of weapons systems and equipment (to include the Stryker, a light armored vehicle, and the Shadow, an unmanned aerial vehicle); (5) deployment of forces and equipment and specific deployment training activities; and (6) institutional matters to include entire range of day-to-day management and operational activities not otherwise accounted for in other activity categories.

DATES: The comment period for the DEIS will end 60 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain a copy of the DEIS, ask questions, or submit written comments, contact Mr. Kevin Gardner, Directorate of Public Works, 730 Quartermaster Road, Attention: APVR–RPW–EV (Gardner), Fort Richardson, AK 99505–6500; or Mr. Calvin Bagley, Center for Environmental Management of Military Lands (CEMML), Colorado State University, Fort Collins, CO 80523–1490.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Gardner by telephone at 907–384–3003; by facsimile at 907–384–3047; or via e-mail at *kevin.gardner@richardson.army.mil*; or Mr. Calvin Bagley by telephone at 970–491–3324; by facsimile at 970–491–2713; or via e-mail at *cbagley@cemml.colostate.edu.*

SUPPLEMENTARY INFORMATION: The DEIS analyzes three alternative courses of action with respect to the transformation of the 172nd Infantry Brigade (Separate) (172nd SIB) into an SBCT at USARAK: (1) The no action alternative, under which no transformation activities would occur and the existing 172nd SIB mission would continue; (2) the transformation of the 172nd SIB with new infrastructure alternative, under which the 172nd SIB, excpet for the 1–501st Parachute Infantry Regiment (PIR), would transform into an SBCT and the construction of five new SBCT-required facilities; and (3) the transformation of the 172nd SIB with new infrastructure and an Airborne Task Force alternative, under which the 172nd SIB, except for the 1–501st PIR, would transform into an SBCT and the construction of five new SBCT-required facilities. Under this alternative, the 1–501st PIR would be assigned to USARAK and would expand to an Airborne Task Force.

Comments on the DEIS received during the 60-day public comment period will be considered in preparing the USARAK's Final EIS. Public meetings will be held during the comment period and will be announced in the local news media.

Copies of the DEIS are avaiable for review at the following libraries: Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska; Chugiak/Eagle River Public Library, 12400 Old Glenn Highway, Eagle River, Alaska; Noel Wien Public Library, 1215 Cowles Street, Fairbanks, Alaska; and the Delta Junction Public Library, Deborah Street, Delta Junction, Alaska. The DEIS is also avaialble for review at the following Web site: *www.cemml.colostate.edu/alaskaeis.*

Dated: June 27, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 03–17015 Filed 7–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The following inventions are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Application Serial Number 10/318,672 entitled ''Non-Lethal Flash Grenade.'' U.S. Patent Application Serial Number 10/337,318 entitled ''Large Package X-Ray Apparatus and Method.'' U.S. Patent 6,371,200 B1 entitled ''Perforated Heat Sink.'' U.S. Patent 6,401,591 B1 entitled ''Neutralization Chemical Injection Penetrator.'' U.S. Patent Application Serial Number 10/021,700 entitled ''Micromechanical Shock Sensor.'' U.S. Patent 6,508,136 entitled ''High Output Differential Pressure Flow Sensor.''

ADDRESSES: Requests for copies of the Patent Application cited should be directed to the Naval Surface Warfare Center, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone 301–744–6111.

Dated: June 24, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–16996 Filed 7–3–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Wickford Technologies, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant Wickford Technologies, Inc., a revocable, nonassignable, partially exclusive license, with exclusive fields of use in knotmeter & anemometer for marine electronics, flow meter for gasoline pumps, flow sensor for process pipe, anemometer for aeronautics, in the United States to practice the Government-owned invention, U.S. Patent Number 6,508,136 entitled ''High Output Differential Pressure Flow Sensor.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 11, 2003.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone 301–744–6111.

Dated: June 24, 2003.

E.F. McDonnell,

Major, Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–16995 Filed 7–3–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences

TIME AND DATE: 8 a.m. to 4 p.m. August 4, 2003.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: 8 a.m. Meeting—Board of Regents

(1) Approval of Minutes—May 16, 2003.

(2) Faculty Matters.

(3) Departmental Reports.

(4) Financial Report.

(5) Report—President, USUHS.

(6) Report—Dean, School of Medicine.

(7) Report—Dean, Graduate School of Nursing.

(8) Comments—Chairman, Board of Regents.

(9) New Business.

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: July 2, 2003.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–17246 Filed 7–7–03; 3:21 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 5, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will

this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 30, 2003.

Angela Arrington,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New Collection.

Title: Student Exchange Questionnaire.

Frequency:

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden: Responses: 200. Burden Hours: 100.

Abstract: FIPSE proposes to establish a post-experience student exchange questionnaire to ensure that the appropriate information and data is collected regarding student experience abroad.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2285. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–17004 Filed 7–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 6, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10202, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 30, 2003.

Angela Arrington,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Special Education Elementary Longitudinal Study (SEELS) (SC).

Frequency: Semi-Annually Biennially.

Affected Public: Individuals or household, not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 31495. Burden Hours: 15978.

Abstract: Special Education Elementary Longitudinal Study (SEELS) will provide the first national picture of the experiences and outcomes of students in special education ages 6 through 12 at the outset of the study. The study will inform special education policy development and support GPRA measurement and IDEA reauthorization. Data will be collected 3 times over a 5 year period from parents, teachers, and principals of sampled students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2254. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–17005 Filed 7–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On June 27, 2003, the Department of Education published a 30-day public comment period notice in the **Federal Register** (page 38317, column 3) for the information collection, ''Federal Family Education Loan Program Federal Consolidation Loan Application and Promissory Note''. This notice was published in error. After a thorough review of public comments received during the 60-day

public comment period, another 30-day public comment period notice will be published. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Joe Schubart at his e-mail address *Joe.Schubart@ed.gov.*

Dated: June 30, 2003.

Angela Arrington,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 03–17006 Filed 7–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.356A]

Office of Elementary and Secondary Education—Alaska Native Education Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

Purpose of Program: To develop and support supplemental educational programs to benefit Alaska Natives.

Permissible Activities: Activities carried out through projects that meet the purposes of this program may include the following: (1) The development and implementation of plans, methods, and strategies to improve the education of Alaska Natives; (2) the development of curricula and educational programs that address the educational needs of Alaska Native students; (3) professional development activities for educators; (4) the development and operation of home instruction programs for Alaska Native preschool children, to ensure the active involvement of parents in their children's education from the earliest ages; (5) family literacy services; (6) the development and operation of student enrichment programs in science and mathematics; (7) research and data collection activities to determine the educational status and needs of Alaska Native children and adults; (8) other research and evaluation activities related to programs carried out under the Alaska Native Education Programs; (9) remedial and enrichment programs to assist Alaska Native students in performing at a high level on standardized tests; (10) education and training of Alaska Native students enrolled in a degree program that will lead to certification or licensing as teachers; (11) parenting education for parents and caregivers of Alaska Native children to improve parenting and caregiving skills (including skills relating to discipline and cognitive development), including parenting education provided through in-home visitation of new mothers; (12) activities carried out through Even Start programs under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965, as amended, and Head Start programs under the Head Start Act, including the training of teachers for the Even Start and Head Start programs; (13) other early learning and preschool programs; (14) dropout prevention programs; (15) career preparation activities to enable Alaska Native children and adults to prepare for meaningful employment, including programs providing ''tech-prep,'' mentoring, training, and apprenticeship activities; (16) provision of operational support and purchasing of equipment to develop regional vocational schools in rural areas of Alaska, including boarding schools for Alaska Native students in grades 9 through 12, or at higher levels of education, to provide the students with necessary resources to prepare for skilled employment opportunities; (17) construction; and (18) other activities, to meet the educational needs of Alaska Native children and adults.

Eligible Applicants: Alaska Native organizations; educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages; cultural and community-based organizations with experience in developing or operating programs to benefit Alaska Natives; and consortia of organizations and entities described in this paragraph to carry out programs that meet the purposes of this program. A State educational agency or local educational agency may apply for an award under this program only as part of a consortium involving an Alaska Native organization. The consortium may include other eligible applicants.

Applications Available: July 7, 2003.

Deadline for Transmittal of Applications: August 6, 2003.

Deadline for Intergovernmental Review: September 5, 2003.

Estimated Available Funds: $14 million.

Estimated Range of Awards: $400,000–$600,000.

Estimated Number of Awards: 28.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 86, 97, 98, and 99. Title VII, Part C of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, 20 U.S.C. 7541–7546. Consolidated Appropriations Resolution, 2003, Public Law No. 108–7, 117 Stat. 327.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition (the specific selection criteria and factors that will be used in evaluating applications are detailed in the application package). The maximum score for all of the selection criteria is 100 points. The maximum points for each criterion is as follows:

(a) Need for Project—5 points.

(b) Significance—5 points.

(c) Quality of Project Design—25 points.

(d) Adequacy of Project Services—20 points.

(e) Quality of Project Personnel—15 points.

(f) Adequacy of Resources—5 points.

(g) Quality of Management Plan—10 points.

(h) Quality of Project Evaluation—15 points.

Priority Points: In accordance with 34 CFR 75.105(b)(iv) and statutory requirements, the Secretary will award 5 bonus points to applications from Alaska Native regional nonprofit organizations, or from consortia that include at least one Alaska Native regional nonprofit organization. The bonus points are in addition to any points the applicant earns under the selection criteria listed above.

For Applications and Information Contact: Mrs. Lynn Thomas, (202) 260–1541, U.S. Department of Education, 400 Maryland Avenue, SW., FOB6, Room 3C126, Mail Stop 6140, Washington, DC 20202. The e-mail address for Mrs. Thomas is: *Lynn.thomas@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Individuals with disabilities may also obtain a copy of the application package in an alternative format on request to the contact person listed above. However, the Department is not able to reproduce in an alternative format the

standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

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 are available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7541–7546.

Dated: June 30, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03–16999 Filed 7–3–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.362A]

Native Hawaiian Education Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

Purpose of the Program: The purpose of the Native Hawaiian Education program, authorized under Part B of Title VII of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001, Pub. L. 107–110, is to support innovative projects that provide supplemental services that address the educational needs of Native Hawaiian children and adults.

Eligible Applicants: Native Hawaiian educational organizations; Native-Hawaiian community-based organizations; and public and private nonprofit organizations, agencies, and institutions with experience in developing or operating Native Hawaiian programs or programs of instructions in the Native Hawaiian language; or consortia thereof.

Applications Available: July 7, 2003.

Deadline for Transmittal of Applications: August 6, 2003.

Deadline for Intergovernmental Review: September 5, 2003.

Estimated Available Funds: $13 million. Of this amount, we will award approximately $5.1 million under absolute priority 1 (family-based education centers); approximately $4.5 million under absolute priority 2 (curriculum and professional development); approximately $724,000 under absolute priority 3 (gifted and talented); approximately $1.7 million under absolute priority 4 (community-based learning centers); approximately $500,000 under absolute priority 5 (early childhood education) and approximately $500,000 under absolute priority 6 (construction/renovation).

Estimated Number of Awards: 8 under absolute priority 1; 9 under absolute priority 2; 1 under absolute priority 3; 3 under absolute priority 4; 1 under absolute priority 5; and 1 under absolute priority 6.

Estimated Average Size of Awards: $637,500 under absolute priority 1; $500,000 under absolute priority 2; $724,000 under absolute priority 3; $567,000 under absolute priority 4, $500,000 under absolute priority 5; and $500,000 under absolute priority 6.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 86, 97, 98, and 99.

Absolute Priorities: In the conference report accompanying the Department's FY 2003 Appropriations Act, Congress urged the Department to support Native Hawaiian education activities in certain specifically identified areas. In response to the conference report, the Secretary establishes the following separate absolute priorities under 34 CFR 75.105(c)(3) and will fund under this competition only applicants that meet one of these priorities:

Absolute Priority 1—Family-Based Education Centers—The applicant will use the funds received under this competition to support the operation of a family-based education center that provides such services as—

(a) Programs for Native Hawaiian parents and their infants from the prenatal period of the infants through age three;

(b) Preschool programs for Native Hawaiians; and

(c) Research on, and development and assessment of, family-based, early childhood, and preschool programs for Native Hawaiians.

Absolute Priority 2—Curriculum and Professional Development—The applicant will use the funds received under this competition to—

(a) Develop academic and vocational curricula to address the needs of Native Hawaiian children and adults, including curriculum materials in the Hawaiian language and mathematics and science curricula that incorporate Native Hawaiian tradition and culture; *or*

(b) Support professional development activities for educators, including—

(i) The development of programs to prepare prospective teachers to address the unique needs of Native Hawaiian students within the context of Native Hawaiian culture, language, and traditions;

(ii) In-service programs to improve the ability of teachers who teach in schools with concentrations of Native Hawaiian students to meet the unique needs of those students; and

(iii) The recruitment and preparation of Native Hawaiians, and other individuals who live in communities with a high concentration of Native Hawaiians, to become teachers.

Absolute Priority 3—Gifted and Talented—The applicant will use the funds received under this competition to support activities that address the special needs of Native Hawaiian students who are gifted and talented, including—

(a) Educational, psychological, and developmental activities designed to assist in the educational progress of those students; and

(b) Activities that involve the parents of those students in a manner designed to assist in the students' educational progress.

Absolute Priority 4—Community-Based Learning Centers—The applicant will use the funds received under this competition to support the operation of a community-based learning center that addresses the needs of Native Hawaiian families and communities through the coordination of public and private programs and services, including—

(a) Preschool programs;

(b) After-school programs;

(c) Vocational and adult education programs; and

(d) Programs that recognize and support the unique cultural and educational needs of Native Hawaiian children and incorporate appropriately qualified Native Hawaiian elders and seniors.

Absolute Priority 5—Early Childhood Education—The applicant will use the funds received under this competition for the development and maintenance of a Native Hawaiian early education and care system to provide a continuum of services for Native Hawaiian children

from the prenatal period of the children through age five.

Absolute Priority 6—School Construction and Renovation—The applicant will use the funds received under this competition for the construction, renovation and modernization of any elementary school, secondary school, or structure related to an elementary school or secondary school, that is run by the Department of Education of the State of Hawaii and that serves a predominantly Native Hawaiian student body.

Competitive Preference: The legislation at 20 U.S.C. 7515(a)(2) establishes specific statutory priorities. In response to these statutory priorities, the Secretary establishes a competitive preference under 34 CFR 75.105(c)(2) for this competition and will award an applicant, in addition to any points that an applicant earns under the selection criteria, five points if it proposes a project that is designed to address one or more of the following:

(a) Beginning reading and literacy among students in kindergarten through third grade;

(b) The needs of at-risk children and youth;

(c) Needs in fields or disciplines in which Native Hawaiians are underemployed; and

(d) The use of the Hawaiian language in instruction.

An applicant that addresses one or more of these areas will receive a total of five additional points in the competition. If an applicant addresses more than one of the four areas of this competitive preference, it will receive a total of five additional competitive preference points, rather than five points for each of the areas addressed.

Waiver of Proposed Rulemaking: It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities and requirements in this notice. Section 437(d)(2) of the General Education Provisions Act (GEPA), however, exempts from this requirement those rules where it would cause extreme hardship to the intended beneficiaries of the program that would be affected by those regulations. In accordance with section 437(d)(2) of GEPA, the Secretary has decided to forgo public comment with respect to the rules in this grant competition in order to ensure timely and high-quality awards. These rules will apply only to the FY 2003 grant competition.

For Applications and Information Contact: Mrs. Lynn Thomas, (202) 260–1541, U.S. Department of Education, 400 Maryland Avenue, SW., FOB6, Room 3C124, Mail Stop 6140, Washington, DC 20202. The e-mail address for Mrs. Thomas is: *lynn.thomas@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed.

Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have any questions about using PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free, at 1–888–293–6498.

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.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7515–7517.

Dated: June 30, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03–17000 Filed 7–3–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA 84.186C]

Safe and Drug-Free Schools Programs for Native Hawaiians Grant Competition

AGENCY: Office of Safe and Drug-Free Schools, Department of Education.

ACTION: Notice inviting applications for new awards using fiscal year (FY) 2002 funds, final priority, definitions, and selection criteria.

Purpose of Program: The purpose of this program is to make financial assistance available to organizations primarily serving and representing Native Hawaiians to plan, conduct, and administer programs designed to prevent violence in and around schools and prevent the illegal use of alcohol, tobacco, and drugs.

Eligible Applicants: Organizations primarily serving and representing Native Hawaiians for the benefit of Native Hawaiian youth.

Applications Available: July 7, 2003.

Deadline for Transmittal of Applications: August 15, 2003.

Deadline for Intergovernmental Review: September 14, 2003.

Estimated Available Funds: $944,000.

Estimated Number of Awards: 1 to 3.

Estimated Size of Awards: $314,666-$944,000 (per project year).

Average Size of Awards: $472,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: Projects will be funded for one year, with options for four additional years contingent upon substantial progress.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the final priority, selection criteria and definition for this grant competition published in this notice.

Definition: For the purposes of this competition, the term ''*Native Hawaiian*'' means any individual any of whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

General: Contingent upon the availability of FY 2003 and FY 2004 funds, we may make additional awards under these appropriations from the rank-ordered list of unfunded applications from this competition.

Other Requirements

Principles of Effectiveness: Programs implemented with funds awarded under this competition must meet the requirements of the Principles of Effectiveness authorized in section 4115(a) of the Safe and Drug-Free Schools and Communities Act.

Participation by Private School Children and Teachers: Local educational agencies (LEAs) that receive a grant are required to provide for the equitable participation of eligible private school children and their teachers or other educational personnel.

In order to ensure that grant program activities address the needs of private school children, timely and meaningful consultation with appropriate private school officials must occur during the design and development of the program. Administrative direction and control over grant funds must remain with the grantee.

Maintenance of Effort LEAs may receive a grant only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

Waiver of Proposed Rulemaking: In accordance with the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. This is the first competition under the Safe and Drug-Free Schools Programs for Native Hawaiians under the ESEA as amended by the No Child Left Behind Act of 2001.

Absolute Priority: Under 34 CFR 75.105(c)(3), we will consider only applications that meet the following absolute priority: Projects implemented by eligible organizations primarily serving and representing Native Hawaiians, for the benefit of Native Hawaiians, to plan, conduct, and administer programs that (1) prevent violence in and around schools; (2) prevent the illegal use of alcohol, tobacco, and drugs; (3) involve parents and communities; and (4) are coordinated with related Federal, State, school, and community efforts and resources to foster a safe and drug-free learning environment that supports student academic achievement.

Performance Measures: We require that applicants under this program establish performance measures for their projects. These performance measures must assess the effectiveness of the Safe and Drug-Free Schools Programs for Native Hawaiians, and include measures related to changes in student behaviors or risk or protective factors related to youth drug use or youth violence.

In applying the selection criteria that follow for ''Quality of the project design'' and ''Quality of project evaluation,'' we will take into consideration the extent to which the applicant demonstrates a strong capacity to (1) help achieve the performance targets identified by the applicant, and (2) provide reliable data to the Department on the project's impact as measured against the performance targets identified by the applicant.

Selection Criteria: We will use the following selection criteria to evaluate applications under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parenthesis.

(1) *Need for project.* (10 points)

In determining the need for the proposed project, we consider the following factor:

The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Significance of the project.* (10 points)

In determining the significance of the proposed project, we consider the following factor:

The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(3) *Quality of the project design.* (45 points)

In determining the quality of the design of the proposed project, we consider following factors:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (10 points)

(c) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (10 points)

(d) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (10 points)

(e) The extent to which the proposed project encourages parental involvement. (5 points)

Note: In applying the selection criteria for ''Quality of the project design'' we will take into consideration the extent to which the applicant demonstrates a strong capacity (1) to help achieve the performance targets identified by the applicant, and (2) to provide reliable data to the Department on the project's impact as measured against the performance targets identified by the applicant.

(4) *Quality of project personnel.* (15 points)

In determining the quality of project personnel, we consider the following factor:

(a) The qualifications, including relevant training and experience, of key project personnel. (10 points)

(b) The extent to which the applicant encourages applications for employment without regard to race, color, national origin, gender, age, or disability. (5 points)

(5) *Quality of the project evaluation.* (20 points)

In determining the quality of the evaluation, we consider the following factors:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

(c) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (5 points)

Note: In applying the selection criteria for ''Quality of the project evaluation'' we will take into consideration the extent to which the applicant demonstrates a strong capacity (1) to help achieve the performance targets identified by the applicant, and (2) to provide reliable data to the Department on the project's impact as measured against the performance targets identified by the applicant.

For Applications and Other Information Contact: David Quinlan, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E248, Washington, DC 20202–6450. Telephone: (202) 260–2658, email address: *david.quinlan@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) 1–888–877–8339.

Individuals with disabilities may obtain this document, or an application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the

contact person listed at the beginning of this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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 FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs, as well as discretionary grant competitions. The Safe and Drug-Free Schools Programs for Native Hawaiians is one of the programs included in the pilot project. If you are an applicant under this grant competition, 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, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We invite your participation in this pilot project. We will continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic of paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED Form 424), Budget Information " Non-Construction Programs, (ED Form 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED Form 424) to the Application Control Center following these steps:

1. Print ED Form 424 from the e-Application system.
2. Make sure that the applicant's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-Application system. You will receive an automatic acknowledgement, which will include a PR/Award number an identifying number unique to your application).
4. Place the PR/Award number in the upper right corner of ED Form 424.
5. Fax ED Form 424 to the Application Control Center within three business days of submitting your electronic application at (202) 260–1349.
6. We may request that you give us original signatures on all other forms at a later date.
7. *Closing Date Extension in the case of System Unavailability:* If you elect to participate in the e-Application pilot for the Safe and Drug-Free Schools Programs for Native Hawaiians 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 via e-Application, by mail, or by hand delivery. For us to grant this extension:

(1) You must be a registered user of e-Applications, 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 a.m. and 3:30 p.m. (ET), 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 p.m. and 4:30 p.m. Eastern time on the deadline date.

The Department must acknowledge and confirm the period of unavailability before you will be granted an extension. To request this extension you must contact David Quinlan by e-mail at *David.Quinlan@ed.gov* or by telephone at (202) 260–2658 or the e-Grants help desk at (888) 336–8930.

You may access the electronic grant application for the Safe and Drug-Free Schools Programs for Native Hawaiians at: *http://e-grants.ed.gov.*

We have included additional information on the e-Application pilot project (see Parity Guidelines between paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the deadline requirements included in this notice.

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Program Authority: 20 U.S.C. 7117.

Dated: June 30, 2003.

Judge Eric Andell,

Deputy Under Secretary for Safe and Drug-Free Schools.

[FR Doc. 03–17002 Filed 7–3–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting cancellation.

On June 24, 2003, the Department of Energy published a notice of open meeting of the Environmental Management Site-Specific Advisory Board, Nevada Test Site 68 FR 37471. Today's notice is announcing the cancellation of the meeting scheduled for July 9, 2003. The next meeting is scheduled for August 13, 2003.

Issued in Washington, DC on June 30, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–17067 Filed 7–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by August 6, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail *(BAllen@omb.eop.gov)* is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA=s Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*herbert.miller@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0670. Mr. Miller may be contacted by telephone at (202) 287–1711.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. EIA–902, ''Annual Geothermal Heat Pump Manufacturers Survey''.
2. Energy Information Administration.
3. OMB Number 1901–0303.
4. Three-year approval requested.
5. Mandatory.
6. The EIA–902 is used to collect data about the manufacture and distribution of geothermal heat pumps and the status of the industry. The information collected will be used by public and private analysts interested in geothermal heat pumps and related energy issues.
7. Business or other for-profit.
8. 160 hours (40 respondents × 1 response per year × 4 hours per response).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13)(44 U.S.C. 3501 et seq).

Issued in Washington, DC, June 30, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–17060 Filed 7–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF03–5032–000, et al.]

United States Department of Energy, et al.; Electric Rate and Corporate Filings

June 27, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. United States Department of Energy—Western Area Power Administration

[Docket No. EF03–5032–000]

Take notice that on June 5, 2003, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA–100, did confirm and approve on an interim basis, to be effective on August 1, 2003, the Western Area Power Administration's (Western) extension of existing Rate Schedules UGP-AS1, UGP-AS2, UGP-AS3, UGP-AS4, UGP-AS5, UGP-AS6, UGP-FTP1, UGP-NFTP1, and UGP-NT1 for transmission service on the Pick-Sloan Missouri Basin Program-Eastern Division effective August 1, 2003, and ending September 30, 2005.

The rates in Rate Schedules UGP–AS1, UGP–AS2, UGP–AS3, UGP–AS4, UGP–AS5, UGP–AS6, UGP–FTP1, UGP–NFTP1, and UGP–NT1 will be in effect pending the Commission's approval of the extension of these or of substitute rates on a final basis.

Comment Date: July 18, 2003.

2. Dhofar Generating Company SAOC

[Docket No. EG03–79–000]

Take notice that on June 25, 2003, Dhofar Generating Company SAOC (DGC) with its principal office at P.O. Box 2609, PC 211, Sultanate of Oman, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

DGC is a company organized under the laws of Sultanate of Oman. DGC states that it will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating an electric generating facility consisting of an approximately 240 MW gross gas-fired electrical plant, located in the Governate of Dhofar, Sultanate of Oman, selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment Date: July 18, 2003.

3. Power Resource Group, Inc.

[Docket No. EL03–136–000]

Take notice that on June 19, 2003, Power Resource Group, Inc. (PRG) filed a Petition for Enforcement Action and Declaratory Order. PRG petitioned the Commission to undertake an enforcement action against the Public Utility Commission of the State of Texas for its failure to implement the Public Utility Regulatory Policies Act of 1978 (PURPA) in accordance with the requirements of PURPA and the Commission's regulations. PRG requests the Commission to apply Section 210(h)(2)(A) of PURPA to enforce the requirements of Section 210(f) of PURPA in Texas.

Comment Date: July 21, 2003.

4. Ameren Energy Marketing Company

[Docket No. ER01–1945–002]

Take notice that on June 23, 2003, Ameren Energy Marketing Company (AEM) submitted for filing revisions to section 3(a) of its market-based rate schedule, in compliance with the Commission's May 9, 2003 Order in Docket No. ER01–1945–000. AEM asserts that Section 3(a) now states that the Commission must approve AEM's sales of energy, capacity and ancillary services to affiliated entities before such sales are made.

AME states that a copy of this filing was served on all of the parties on the official service list compiled by the Secretary in this docket.

Comment Date: July 14, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER02–111–011 and ER02–652–006]

Take notice that on June 24, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an errata to its June 19, 2003 filing in these proceedings concerning Schedule 10 (ISO Cost Recovery Adder) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, pursuant to Order of the Federal Energy Regulatory Commission, Midwest Independent Transmission System Operator Inc., 103 FERC ¶ 61,205 (2003).

Midwest ISO states that pursuant to the Settlement reached in these proceedings, the Midwest ISO requests an effective date of March 1, 2003.

Midwest ISO has requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading ''Filings to FERC'' for other interested parties in this matter.

Comment Date: July 15, 2003.

6. New England Power Pool and ISO New England

[Docket No. ER02–2330–013]

Take notice that on June 18, 2003, ISO New England Inc., submitted a compliance report on the development of new performance-based standards for determining energy usage as required by the Commission's December 20, 2002 Order in Docket No. ER02–2330–001, *et al.*

Comment Date: July 18, 2003.

7. California Independent System Operator Corporation

[Docket Nos. ER03–608–001, ER00–2019–008, and ER01–819–003]

Take notice that on June 23, 2003, the California Independent System Operator Corporation (ISO) tendered an information filing in accordance with the Commission's Order of May 30, 2003, 103 FERC ¶ 61,260, in which the Commission acted on an amendment (Amendment No. 49) to the ISO Tariff.

The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, Participating Transmission Owners under the ISO Tariff, all parties with effective Scheduling Coordinator Service Agreements und the ISO Tariff, and to all parties not among the foregoing on the restricted service list in Docket Nos. ER03–608–000, ER00–2019–006, and ER01–819–002. The ISO also states that this filing will be posted on the ISO's Web site at *http://www.caiso.com*.

Comment Date: July 14, 2003.

8. Power Contract Financing, L.L.C.

[Docket No. ER03–838–001]

Take notice that on June 24, 2003, Power Contract Financing, L.L.C. tendered for filing all currently effective tariff sheets to replace the company's former name CES Marketing, LLC, with the company's current name, to Power Contract Financing, L.L.C.

Comment Date: July 15, 2003.

9. American Electric Power Service Corporation

[Docket No. ER03–979–000]

Take notice that on June 23, 2003, American Electric Power Service Corporation (AEPSC) submitted for filing an amendment to the Interconnection Agreement, dated September 2, 1998 between Central Power and Light Company and South Texas Electric Cooperative, Inc. (STEC) that provides for additional agreements on the parties' construction of transmission facilities related to their existing point of interconnection at the City of Robstown Substation. AEPSC states that other changes have been made to the Interconnection Agreement.

AEPSC seeks an effective date of May 1, 2003 for this amendment to the agreement and waiver of the Commission's notice of filing requirement because there are no related rates or charges.

AEPSC states that it has served copies of the filing on STEC and the Public Utility Commission of Texas.

Comment Date: July 14, 2003

10. PJM Interconnection, L.L.C.

[Docket No. ER03–980–000]

Take notice that on June 23, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing three interim interconnection service agreements between PJM and PSEG Fossil, L.L.C. PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective date of June 4, 2003 for the agreements.

PJM states that copies of this filing were served upon PSEG Fossil, L.L.C. and the state regulatory commissions within the PJM region.

Comment Date: July 14, 2003.

11. Public Service Company of New Mexico

[Docket No. ER03–981–000]

Take notice that on June 24, 2003, Public Service Company of New Mexico (PNM) submitted for filing an Interim Invoicing Agreement with respect to invoicing for coal deliveries from San Juan Coal Company among PNM, Tucson Electric Power Company (TEP), and the other owners of interests in the San Juan Generating Station covering the period from January 1, 2003 through December 31, 2003. PNM states that the Interim Invoicing Agreement is an appendix to the San Juan Project Participation Agreement (PPA), and effectively modifies the PPA for that same period.

PNM requests waiver of the Commission's notice requirements in order to allow the Interim Invoicing Agreement to be effective as of January 1, 2003. PNM states that copies of the filing have been sent to the New Mexico Public Regulation Commission, TEP, and each of the owners of an interest in the San Juan Generating Station. PNM's also state that the filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment Date: July 15, 2003.

12. Ameren Services Company

[Docket No. ER03–982–000]

Take notice that on June 25, 2003, Ameren Services Company (ASC) tendered for filing three executed Service Agreements for Firm Point-to-Point Services between ASC and Ameren Energy Marketing Company. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission services to Ameren Energy Marketing Company pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: July 16, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–17021 Filed 7–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7522–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Nation Oil and Hazardous Substances Pollution Contingency Plan—Subpart J, EPA ICR 1664.05, OMB Control Number RIN 2050–AE87, expiration date 01/31/2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 5, 2003.

ADDRESSES: Interested persons may obtain a copy of the ICR without charge by contacting the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for this ICR is OPA 2003–0001. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276. You may copy a maximum of 100 pages from a regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies to you if you are outside the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: William ''Nick'' Nichols, (703) 603–9918, Facsimile Number (703) 603–9116, e-mail: *nichols.nick@epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacture, sell, distribute and/or use oil spill dispersants, other chemicals, and other spill mitigating devices and substances that may be used in carrying out the NCP, as listed in 40 CFR 300.900 on land or waters of the United States.

Title: National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J (NCP) (OMB Control No. RIN 2050–AE87; EPA ICR No.1664.05), expiring 01/31/2004.

Abstract: Subpart J of the NCP allows and regulates the use of chemical and biological oil spill cleanup and control agents. The information collected is supplied by the manufacturer of such products. This information and data are then analyzed by EPA to determine the appropriateness, and under which category, the product may be listed on the NCP Product Schedule. This product data is critical for EPA to obtain in order to assure that effectiveness and toxicity data for these products is available to the oil spill community in order to use them legally and effectively. Responses to the collection of information are mandatory if EPA determines that the products specifications require its listing under subpart J (40 CFR 300.5 Definitions). However, manufacturers volunteer to have their product analyzed. The authority to review and use a product is 40 CFR 300.910. Confidentiality of data, ingredients, and other proprietary information for the products is maintained by EPA. Manufacturers may use any certified lab in the U.S. to test their product's effectiveness and toxicity. The cost of such tests range from $1,200 to $15,000 per test. The process to have a product listed takes at least 30 days, but no longer than 60 days, depending on the accuracy and completeness of the product information package provided to EPA by the manufacturer. Due to the technical and graphical data required to be listed, electronic submissions are not accepted.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: Estimated projected cost and hour burden for listing a product are between 13.4 and 40 hours at a cost ranging from under $3,500 to $16,021 depending on the product and what the lab charges the manufacturer to test the product. EPA estimates that an average of 14 product applications are submitted each year at a cost of $95,558 ($6,825 average) to manufacturers and $17,708 to EPA. Additional data requirements include changes to manufacturer's address, name of product, distributers, product specifications, and any other changes to the product. Changes to the product's composition may require further testing and data submission to EPA. Otherwise the cost to supply this information to EPA is a one-time cost. EPA does not charge any fees to maintain records for a product nor are there any costs to update the product's file other than those mentioned above. There are no required capital, start up cost or fees required by EPA to have a product listed.

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.

Dated: June 27, 2003.

Stephen Heare,

Acting Director, Office of Emergency Prevention, Preparedness, and Response.

[FR Doc. 03–17103 Filed 7–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 03–15, RM 9832, MM Docket Nos. 99–360, 00–167, 00–168; DA 03–1292]

RIN 3060–AH54

Simulcasting Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice; temporary waiver request.

SUMMARY: This document discusses three requests filed with the Commission by various parties regarding DTV simulcasting requirements. This item grants a 6 month waiver of NCE TV stations to give them more time to comply with the requirements. This document also denies a request for suspension of the increase in minimum DTV operating hours. These actions are taken in compliance with the Commission's DTV rules.

FOR FURTHER INFORMATION CONTACT: Kim Matthews, Media Bureau at (202) 418–2154 or via Internet at *Kim.matthews@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document is a summary of the Commission's *Order*, MB 03–15; DA 03–1292, adopted April 28, 2003 and released April 29, 2003. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via Internet at *http://www.fcc.gov/mb/*.

Synopsis of Order

1. The Media Bureau has received three requests related to the DTV simulcast requirements in § 73.624(f) of our rules. Noncommercial educational television stations collectively request a temporary suspension of the DTV simulcasting requirements as they apply to NCE stations. Paxson Communications Corporation (''Paxson'') and Milwaukee Area Technical College (''MATC'') request temporary waivers of § 73.624(f). As discussed, we grant NCE stations a six-month waiver of the DTV simulcast requirements. We also grant the waiver request of MATC and deny the Paxson waiver request.

Background

2. Section 73.624(f) of the Commission's rules requires DTV licensees to simulcast 50% of the video programming of their analog channel on their DTV channel by April 1, 2003. This requirement increases to a 75% simulcast requirement on April 1, 2004, and a 100% requirement on April 1, 2005. The simulcasting requirement was intended to ensure that consumers enjoy continuity of free over-the-air video programming service when analog spectrum is reclaimed at the end of the transition. The Commission stated that it may be difficult to terminate analog broadcast service if broadcasters show programs on their analog channels that are not available on their digital channels.

3. In the Memorandum Opinion and Order on Reconsideration (''*MO&O*'') in the 1st DTV periodic review, MM 00–39 (66 FR 65122, December 18, 2001), the Commission allowed stations subject to the May 1, 2002, or May 1, 2003, digital construction deadlines to operate initially at a reduced schedule by providing, at a minimum, a digital signal during prime time hours, consistent with their simulcast obligations. The minimum operating hours for these digital stations effectively increases as the simulcast obligations are phased in. For example, beginning April 1, 2003, a DTV station that was required to be on the air by May 1, 2002, must provide a simulcast digital signal at least 50% of the time it transmits an analog signal and. Along with the simulcasting requirements, the minimum hours requirements step up to a 75% requirement in April 2004, and a 100% requirement in April 2005. Stations that were subject to the earlier DTV construction deadlines (top four network affiliates in the top thirty markets) are required to operate their DTV station at any time that the analog station is operating.

4. In the Notice of Proposed Rule Making (''*NPRM*'') initiating the 2nd periodic review of the transition to digital television (68 FR 7737, February 18, 2003), the Commission sought comment on whether it should retain, revise, or remove the simulcast requirement. The Commission asked whether broadcasters have a market-based incentive to simulcast that makes a simulcast requirement unnecessary. The Commission also asked whether the simulcasting requirement is causing broadcasters to forego creative uses of digital technology, and if something less than the ultimate 100% simulcast requirement would be sufficient to protect analog viewers while allowing for innovation on DTV channels. The Commission also sought comment on how to define simulcasting, and whether the current dates for the phase-in of simulcast requirements are appropriate.

5. *NCE Television Stations*. Dow, Lohnes & Albertson, Schwartz, Woods & Miller, the Public Broadcasting Service, and the Association of Public Television Stations (collectively referred to herein as ''PBS, *et al.*''), on behalf of NCE TV licensees, request that the FCC temporarily suspend the DTV simulcasting requirements as they apply to NCE stations pending FCC action on the simulcasting issues in the 2nd DTV periodic review proceeding. The emergency request states that, although many NCE DTV stations will be able to transmit a digital television signal by the May 1, 2003, construction deadline, some stations do not yet have in place necessary studio transmitter links (''STLs'') or other digital interconnection facilities between their studios and their transmitters to permit them to receive the simulcast programming feed from their studios. According to PBS, some NCE stations also do not yet have the encoding equipment that enables the station to digitize its NTSC programming for DTV broadcast.

6. We recognize that, unlike commercial licensees, the deadlines to complete construction of digital facilities and to comply with the 50% simulcasting requirement for noncommercial educational licensees were the same. PBS states that many

NCE stations will be unable to both begin digital operations and comply with our current simulcasting obligations by May 1, 2003. In light of the burden faced by NCE stations in complying with both the construction and simulcasting requirements simultaneously, and in light of our pending re-evaluation of our simulcasting requirements, we find that good cause exists to grant NCE stations a six-month waiver of the simulcast requirements in § 73.624(f). Until November 1, 2003, noncommercial educational television stations will not be required to simulcast on their digital channel the programming that is aired on their analog channel. This six-month waiver of our simulcast requirements will give NCE stations additional time to acquire and install the facilities necessary to meet the simulcast requirement. We will consider granting special relief to NCE stations in certain circumstances, such as those presented here, because of the particular financial difficulties NCE stations face and the assistance they will need in the transition to DTV. Although NCE stations requested a waiver until resolution of the simulcasting issues raised in the 2nd DTV Periodic *NPRM*, we do not believe it is necessary to grant a blanket waiver to all NCE stations for an indefinite period of time. We believe that a six-month waiver should provide sufficient time for those NCE stations that do not already have simulcasting equipment to obtain and install such equipment. In the event the Commission has not yet acted on the simulcasting issues raised in the 2nd DTV Periodic *NPRM*, and in the event some NCE stations decide to request a waiver for an additional period of time, we will consider those requests at that time on their individual merit. In taking this action we are not making a final ruling on the matters raised for comment in the 2nd DTV Periodic *NPRM*.

7. This action in no way waives the existing rules regarding the minimum hours of operation on digital channels. NCE stations must air, by May 1, 2003, a digital signal for an amount of time equivalent to at least 50% of the time they provide an analog signal. In addition, a digital video program signal must be aired during prime time hours. The minimum digital operating requirement increases to 75% on April 1, 2004 (requiring airing of a digital signal for an amount of time equivalent to at least 75% of the time the station airs an analog signal), and to 100% on April 1, 2005. Stations, both commercial and NCE, that have been granted an extension of time to construct their DTV facilities must comply with the minimum digital operation requirements in effect at the time the station commences digital operations.

8. *MATC Waiver Request.* MATC, licensee of two noncommercial educational television stations in Milwaukee, Wisconsin, requests a temporary waiver of § 73.624(f), for an unspecified period of time, to permit it to simulcast the analog programming of both of its NCE stations on one of its associated digital stations, and to use the other digital station to air high definition programming full time. MATC states that it has been operating WMVS–DT, associated with WMVS, Channel 10, since early 2000, and that it will comply with the simulcasting requirements applicable to that station. MATC has been granted an extension of time to complete construction of WMVT–DT, associated with WMVT, Channel 36, and expects that station to be on the air in July 2003. MATC states that the waiver it seeks will be needed only at the point that WMVT-DT commences operations.

9. MATC notes that, because it plans, at least initially, to provide its simulcast service on WMVS–DT, which has a larger predicted coverage area than WMVT–DT, each potential DTV viewer of MATC's stations should be able to receive the simulcast programming of both stations. MATC argues that its plan would satisfy the purpose behind the simulcasting requirement and allow MATC to investigate the feasibility in the market of an all-HDTV programming service. MATC also argues that its plan could stimulate the sale of DTV sets in its market, thereby furthering the transition.

10. We find good cause to grant MATC a waiver of the simulcast requirements in § 73.624(f), pending the issuance of an *R&O* in the 2nd DTV periodic review, to permit it to implement the plan it proposes in its waiver request. We note that, under MATC's proposal, it will be providing simulcast digital service of both of its analog channels to its community. By temporarily waiving the current rules, we are permitting MATC to experiment with innovative uses of its other digital channel and to offer additional digital programming to the community. Because MATC has committed to providing simulcasting, in the manner proposed in its waiver request, allowing it to offer additional digital programming to the community, we believe that it is appropriate to grant MATC a longer waiver to implement its proposed simulcasting plan than the waiver given to other NCE stations. In the 2nd DTV periodic review, the Commission will consider, among other issues related to the simulcast requirement, whether the current simulcast rules should be amended to facilitate similar and other innovative uses of digital stations. As in the case of the temporary simulcast waiver granted above to all NCE stations, MATC will be required to comply with the existing rules regarding minimum hours of operation of digital channels.

11. *Paxson Waiver Request.* Paxson, corporate parent of the licensees of twenty-eight commercial DTV stations, requests a one-year waiver of § 73.624(f), and in particular the minimum operating hours requirements currently pegged to the § 73.624(f) simulcasting requirements. Paxson notes that regulatory uncertainty remains in two areas central to broadcasters' transition planning: DTV must-carry and DTV simulcasting requirements. Paxson argues that, without cable carriage, adherence to the simulcast requirement will not advance the DTV transition or improve service to television viewers, while placing undue financial and technical burdens on Paxson's DTV stations. Paxson notes that the 50% simulcast requirement that became effective April 1, 2003, represents a four-fold increase in Paxson's DTV stations' operating schedule, with corresponding increases in the stations' operating costs. Paxson argues that until broadcasters obtain carriage of their DTV signals, it should not be required to expand DTV service beyond prime-time as most viewers will not be able to view DTV broadcasts until cable carriage is achieved. Paxson also notes that the Commission is considering whether to alter or eliminate the simulcasting requirements.

12. We do not believe that it is appropriate at this stage in the transition to reduce or eliminate the mandatory hours of operation of digital stations. Increasing the operating hours of digital stations subject to the May 1, 2002, and May 1, 2003, digital construction deadlines will help further the transition by helping to drive DTV set penetration and encouraging content producers and advertisers to invest in DTV. These stations have been on notice since the November 2001 adoption of the phased-in simulcast requirements in the 1st DTV Periodic Review *MO&O* that their DTV operating hours must be stepped-up beginning on April 1, 2003. We also do not believe that the required, gradual increase in the hours of digital programming offered to viewers on these stations needs to await finalization of the Commission's separate proceeding regarding mandatory carriage of analog and digital signals

during the transition. It is neither appropriate nor necessary to waive or reduce the minimum operating hours of digital broadcast stations, thereby slowing the transition, pending the outcome of that proceeding. Finally, the Commission did not contemplate altering the minimum hours of operation of DTV stations in the 2nd DTV Periodic Review *NPRM;* therefore, the pendancy of that proceeding does not provide grounds for deferring the effective date of the increased operating requirements.

Ordering Clauses

13. Pursuant to the authority contained in 47 CFR 1.3 of the Commission's rules, NCE TV stations are granted a six-month waiver of the simulcast requirements in § 73.624(f) of the Commission's rules, until November 1, 2003, as described herein.

14. The Request for Temporary Waiver of DTV Simulcasting Requirements filed by Milwaukee Area Technical College is granted to the extent described herein.

15. The Request for Temporary Waiver of § 73.624(f) of the Commission's Rules, filed by Paxson Communications Corporation, is denied.

16. This action is taken pursuant to authority delegated by 47 CFR 0.61(h) and 0.283 of the Commission's rules.

Federal Communications Commission.

W. Kenneth Ferree,

Chief, Media Bureau.

[FR Doc. 03–16626 Filed 7–3–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the following information collection systems described below.

1. *Type of Review:* Renewal of a currently approved collection.

Title: Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).

OMB Number: 3064–0093.

Form Number: G–FIN, G–FINW, G–FIN–4, G–FIN–5.

Annual Burden

Estimated annual number of respondents: 180.

Estimated time per response: 1 hour.

Total annual burden hours: 180 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirement by Treasury Department regulation.

2. *Type of Review:* Renewal of a currently approved collection.

Title: Foreign Banks.

OMB Number: 3064–0114.

Annual Burden

Estimated annual number of respondents: 418.

Estimated time per response: ranges from ¼ hour to 120 hours.

Total annual burden hours: 4,398 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: The collection of information consists of (a) applications to operate as a noninsured state-licensed branch of a foreign bank; (b) applications from an insured state licensed branch of a foreign bank to conduct activities which are not permissible for a federally-licensed branch; (c) internal recordkeeping by insured branches of foreign banks; and (d) reporting requirements relating to an insured branch's pledge of assets to the FDIC.

3. *Type of Review:* Renewal of a currently approved collection.

Title: Certification of Eligibility Under the Affordable Housing Program.

OMB Number: 3064–0116.

Annual Burden

Estimated annual number of respondents: 12.

Estimated time per response: 1 hour.

Total annual burden hours: 12 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: The collection of information certifies income eligibility under the affordable housing program. This certification assists the FDIC in determining an individual's eligibility for purchasing affordable housing properties from the FDIC.

4. *Type of Review:* Renewal of a currently approved collection.

Title: Mutual-to-Stock Conversions of State Savings Banks.

OMB Number: 3064–0117.

Annual Burden

Estimated annual number of respondents: 10.

Estimated time per response: 50 hours.

Total annual burden hours: 500 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: 12 CFR 303.161 and 333.4 require state savings banks that are not members of the Federal Reserve System to file with the FDIC a notice of intent to convert to stock form and provide copies of documents filed with State and Federal banking and or securities regulators in connection with the proposed conversion.

5. *Type of Review:* Renewal of a currently approved collection.

Title: Notification of Changes in Insured Status.

OMB Number: 3064–0124.

Annual Burden

Estimated annual number of respondents: 943.

Estimated time per response: ¼ hour.

Total annual burden hours: 236 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: 12 U.S.C. 1818(q) requires an insured depository institution to provide the FDIC with a certification when it partially or completely assumes deposit liabilities from another insured depository institution.

6. *Type of Review:* Renewal of a currently approved collection.

Title: Applicant Background Questionnaire.

OMB Number: 3064–0138.

Form Number: 2100/14.

Annual Burden

Estimated annual number of respondents: 10,000.

Estimated time per response: 3 minutes.

Total annual burden hours: 500 hours.

Expiration Date of OMB Clearance: July 31, 2003.

SUPPLEMENTARY INFORMATION: The FDIC Applicant Background Questionnaire is

completed voluntarily by FDIC job applicants who are not current FDIC employees. Responses to questions on the survey provide information on gender, age, disability, race/national origin, and to the applicant's source of vacancy announcement information. Data is used by the Office of Diversity and Economic Opportunity and the Personnel Services Branch to evaluate the effectiveness of various recruitment methods used by the FDIC to ensure that the agency meets workforce diversity objectives.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–4741, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FDIC Contact: Tamara R. Manly, (202) 898–7453, Legal Division, Room MB 3109, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on these collections of information are welcome and should be submitted on or before [insert date 30 days after date of publication in the **Federal Register**] to both the OMB reviewer and the FDIC contact listed above.

ADDRESSES: Information about this submission, including copies of the proposed collections of information, may be obtained by calling or writing the FDIC contact listed above.

Dated: June 30, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–16950 Filed 7–3–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Lynn Martin Hoghaug, Devils Lake, North Dakota; to acquire voting shares of Ramsey Financial Corporation, Devils Lake, North Dakota, and thereby indirectly acquire voting shares of The Ramsey National Bank and Trust Company of Devils Lake, Devils Lake, North Dakota.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Kurt S. and Judith Moylan, Barrigada Heights, Guam, to acquire additional voting shares of Citizens Bancorp, Agana, Guam, and thereby indirectly acquire additional voting shares of Citizens Security Bank (Guam), Inc., Agana, Guam.

Board of Governors of the Federal Reserve System, June 30, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–17031 Filed 7–3–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 6, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 6, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 1¼ percent.

[1] Copies of the Minutes of the Federal Open Market Committee meeting on May 6, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

By order of the Federal Open Market Committee, June 30, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–17032 Field 7–3–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on July 24–25, 2003

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its twelfth meeting, at which, among other things, it will hear and discuss presentations on ''the research imperative'' (Daniel Callahan); the ethics of stem cell research (Paul Lauritzen); recent developments in stem cell research (Rudolph Jaenisch, David Prentice, John Gearhart); and developments in stem cell research law and policy (Lori Andrews).

Subjects discussed at past Council meetings (and potentially touched on at this meeting) include: human cloning, embryo research, lifespan-extension research, organ procurement for transplantation, and extra-therapeutic powers to enhance or improve human mood, memory, or muscles. The Council may also discuss issues surrounding the regulation of assisted reproduction and reproductive genetics (including IVF, ICSI, PGD; sex selection, inheritable genetic modification; and the patentability of human genes, tissues, and organisms).

DATES: The meeting will take place Thursday, July 24, 2003, from 9 am to 5:15 pm ET; and Friday, July 25, 2003, from 8:30 am to 12:30 pm ET.

ADDRESSES: The Ritz-Carlton, 1150 22nd Street, NW., Washington, DC 20037.

Public Comments: The meeting agenda will be posted at *http://www.bioethics.gov.* Members of the public may comment, either in person or in writing. A period of time will be set aside during the meeting to receive comments from the public, beginning at 11:30 am, on Friday, July 25. Comments will be limited to no more than five minutes per speaker or organization. Please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and please give her your name, affiliation, and a brief description of the topic or nature of your comments. To submit a written statement, mail or

e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202/296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

Dated: June 30, 2003.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 03–17057 Filed 7–3–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Health Care Policy and Research Special Emphasis Panel (SEP); Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Minority Research Infrastructure Support Program (R24) Awards are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: AHRQ Minority Research Infrastructure Support Program (R24) Awards.

Date: July 11, 2003 (open on July 11 from 8 a.m. to 8:10 a.m. and closed for the remainder of the meeting).

Place: Quality Suites & Conference Center, 3 Research Court, Rockville, MD 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days to the July 11 meeting, due to the time constraints of reviews and funding cycles.

Dated: June 27, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–17045 Filed 7–3–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–87]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: 2004 Lesbian/Gay/Bisexual/Transgender (LGBT) Adult Tobacco Survey (ATS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The purpose of this project is to test and pilot a culturally appropriate Adult Tobacco Survey questionnaire for the lesbian/gay/bisexual/transgender (LGBT) population. This questionnaire will expand data and existing knowledge of tobacco use among LGBTs in order to benefit tobacco use and prevention surveillance at a state, local, and/or regional level. The questions will help to narrow existing gaps in knowledge of tobacco use among LGBTs and inform development of LGBT-specific interventions.

Numerous factors suggest that LGBT individuals may be at risk for high smoking prevalence. These factors include economic and social marginalization, homophobia, discrimination, the high prevalence of smoking in historically important LGBT social settings such as bars, and behaviors associated with smoking, such as alcohol and drug abuse. Additionally, since the 1980s, the tobacco industry has targeted the LGBT population. A recent review of the literature estimated smoking rates to range from 25 percent to 50 percent among gays, lesbians, and bisexuals compared to 28 percent nationally for adults overall during comparable periods. No articles addressing tobacco use by transgender individuals were found.

In an effort to better understand the effects of smoking among LGBTs, CDC will utilize a culturally appropriate questionnaire for pilot implementation in the LGBT population. The survey will be conducted with 750 lesbian, 750 gay, 750 bisexual, and 750 transgender individuals, for a total of three-thousand participants. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Lesbian	750	1	45/60	562.5
Gay	750	1	45/60	562.5
Bisexual	750	1	45/60	562.5
Transgender	750	1	45/60	562.5
Total				2,250

Dated: June 30, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–17012 Filed 7–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–86]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: 2004 Latino Adult Tobacco Survey (ATS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The purpose of this project is to test and pilot a culturally appropriate Adult Tobacco Survey questionnaire for Latinos, specifically Puerto Ricans, Mexican-Americans, and Cubans. This questionnaire will expand data and existing knowledge of tobacco use among Latinos in order to benefit tobacco use and prevention surveillance at a state, local, and/or regional level. The questions will help to narrow existing gaps in knowledge of tobacco use among Latinos and inform development of Latino-specific interventions.

The Latino population is fast growing in the United States. It is expected that the number of Latinos living in the U.S. will increase from 35.3 million in the year 2000 to 98.2 million in the year 2050, almost 3 times the current population. A large growth in Latino populations, especially in non-traditional states, will have important implications in terms of tobacco control in the years to come. CDC is conducting a survey project that includes:

(1) Developing a culturally appropriate Adult Tobacco Survey questionnaire for Latinos

(2) Piloting the final instrument in approximately five Latino communities

In an effort to better understand the effects of smoking in Latino populations, CDC will utilize a culturally appropriate questionnaire for pilot implementation in approximately five Latino communities. The location of these communities is currently undecided. Within each community, the survey will be conducted with six-hundred participants, for a total of three-thousand participants. The survey will be conducted in both English and Spanish. There is no cost to the respondents.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Participants Community 1	600	1	45/60	450
Participants Community 2	600	1	45/60	450
Participants Community 3	600	1	45/60	450
Participants Community 4	600	1	45/60	450
Participants Community 5	600	1	45/60	450
Total				2,250

Dated: June 30, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–17013 Filed 7–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–85]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: 2003 Tribal Adult Tobacco Survey (ATS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The purpose of this project is to test and pilot a culturally appropriate Adult Tobacco Survey questionnaire for American Indians and Alaska Natives. This questionnaire will expand data and existing knowledge of tobacco use among American Indians and Alaska Natives in order to benefit tobacco use and prevention surveillance at a tribal, state, and/or regional level. The questions will help to narrow existing gaps in knowledge of tobacco use among different tribes and inform development of tribal-specific interventions.

Current smoking prevalence among American Indians and Alaska Natives (36.0 percent) is highest compared to all other racial/ethnic groups (2000 NHIS). While national and regional data exist for American Indians and Alaska Natives, tribal level data is extremely limited. Currently, there are over 500 sovereign tribal nations in the U.S. In order to better understand tobacco use among American Indians and Alaska Natives, CDC is conducting a survey project that includes:

(1) Developing a culturally appropriate Adult Tobacco Survey questionnaire for tribes.

(2) Piloting the final instrument in approximately 30 tribes represented by six of seven Tribal Support Centers (TSCs).

In an effort to better understand the effects of smoking in American Indian and Alaska Native populations, the Support Centers for Tobacco Programs (SCTP) will utilize a culturally appropriate questionnaire for pilot implementation in six different tribal centers. The centers are located in Alaska, California, Oklahoma, Michigan, along with two tribal centers located in the upper Midwest and Northwest. In total, the SCTPs will collect approximately 2,400–2,800 completed surveys (the number varying by Center respective to the size of each tribe, 18 years of age and older), which will be representative of distinct tribal communities conducting the survey. The SCTP will be responsible for obtaining the completed surveys. Trained individuals from each of the respective communities and/or support centers will conduct interviews. Most interviews will be conducted face-to-face, with a small proportion conducted by telephone. There is no cost to respondents.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Pilot Survey: Tribal members 18 years of age and older	2,800	1	45/60	2,100
Total				2,100

Dated: June 30, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–17014 Filed 7–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Public Health Laboratory Biomonitoring Implementation Program, Program Announcement #03034

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Public Health Laboratory Biomonitoring Implementation Program, Program Announcement #03034.

Times and Dates: 8:30 a.m.–9:15 a.m., July 28, 2003 (Open), 9:15 a.m.–4:30 p.m., July 28, 2003 (Closed).

Place: J.W. Marriott, 3300 Lenox Road, NE., Atlanta, GA 30326, Telephone 404.262.3344.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and

evaluation of applications received in response to Program Announcement #03034.

For Further Information Contact: Drue Barrett, Ph.D., Deputy Associate Director for Science, National Center for Environmental Health, CDC, 4770 Buford Highway, MS–F29, Atlanta, GA 30341, Telephone 770.488.7653.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 26, 2003.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–17017 Filed 7–3–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0209]

Guidance for Industry and FDA Staff on Class II Special Controls Guidance Document; Breath Nitric Oxide Test System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Breath Nitric Oxide Test System.'' This guidance describes a means by which the breath nitric oxide test system may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the breath nitric oxide test system into class II (special controls). This guidance is effective immediately as the special control for the breath nitric oxide test system, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Breath Nitric Oxide Test System'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this 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. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Jean Cooper, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the breath nitric oxide test system into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for the breath nitric oxide test system device. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (§ 10.115). The guidance represents the agency's current thinking on the breath nitric oxide test system. 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 requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 USC 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

IV. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance 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. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive ''Class II Special Controls Guidance Document: Breath Nitric Oxide Test System'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1211) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a paper copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a

regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Division of Dockets Management Internet site at http://www.fda.gov/ohrms/dockets.

Dated: June 23, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–16954 Filed 7–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HRSA Grantee Telecommunications and Telehealth Inventory and Database—New

The Health Resources and Services Administration's (HRSA) mission is to improve and expand access to quality health care for all. Through its grant program, HRSA provides funds to ensure the availability of quality health care to low income, uninsured, isolated, vulnerable and special needs populations.

Within HRSA, the Office for the Advancement of Telehealth (OAT) increases access to quality health care services for the underserved by promoting the use of advanced telecommunications and information technologies by health care providers across America. HRSA is a leading national supporter and developer of telehealth, which is the use of electronic information and telecommunications technologies for a wide variety of health-related activities. These include long-distance clinical care, patient and professional education, and health administration.

HRSA provides grant funding to over 8000 recipients to improve healthcare delivery in the United States. Those offices and programs increasingly depend on the emerging technologies and telecommunications systems to deliver healthcare, yet no data is available on grant recipients' access to or utilization of those technologies. The proposed inventory will serve as a model for collecting this type of information across a disparate group of projects nationally and if successful will be ultimately integrated into HRSA's overall data system.

All grantees will be asked to address access to telehealth technologies at their respective institutions. Telehealth activities include the practice of telemedicine, delivery of distance education, health informatics, healthcare staff supervision from remote sites, and the provision of consumer health information using telecommunications technologies. Additionally, grantees will be asked to provide information on their network members or satellite site. For those grantees practicing telemedicine, the survey will include a section on diagnostic tools and clinical capabilities.

The survey will be delivered via the world wide web; hard copy will be made available for those grantees with no Internet access. Substantive questions may be systematically included in the grantees' progress reporting.

Estimated burden hours:

Task	Number of respondents	Number of responses per respondent	Total Number of responses	Hours per response	Total burden hours
Inventory assessment tool—Grant support	100	1	100	.5	50
Inventory assessment tool—No grant support	7,900	1	7,900	.17	1,343
Total	8,000	.....	8,000	.....	1,393

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number 202–395–6974.

Dated: June 27, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–16955 Filed 7–3–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

Computer Based Model for the Identification and Characterization of Noncompetitive Inhibitors of the Nicotinic Acetylcholine Receptors and Related Ligand Gated Ion Channels

I. W. Wainer (NIA), K. Jozwiak (NIA), S. Ravichandran (SAIC-Frederick), and J. R. Collins (SAIC-Frederick)
DHHS Reference No. E–158–2003/0 filed 11 Apr 2003
Licensing Contact: Cristina Thalhammer-Reyero; 301/435–4507; *thalhamc@mail.nih.gov.*

NIH announces a method for the rapid determination and characterization of noncompetitive inhibitors for nicotinic acetylcholine receptors (nAChR) and other ligand gated ion channels, to be used in drug discovery and development. Furthermore, inhibitors for AChRs are described, which form a large and chemically heterogeneous group of compounds that block the receptor. Inhibitors of AChRs affect a large variety of physiological processes and many are used for therapeutic purposes in different areas.

Classical methods for the identification and characterization of noncompetitive inhibitors are time consuming and not effective in rapid screening of chemical libraries for potential new drug candidates, nor can they be routinely used in the new drug development process. This invention describes the first computer-based model of the inner lumen of a ligand gated ion channel, as well as unique, previously unidentified and unexpected binding pockets. This method allows for computer simulated structures of the members of chemical libraries to be interacted with the computer-based model of the ligand gated channel and the simulation used to predict and describe the pharmacological importance of the interaction, and to screen for unexpected interactions and toxicities of a drug candidate due to off-target interactions.

Ligand gated ion channels are currently one of the largest targets for drug discovery in the pharmaceutical industry. The Ligand Gated Ion Channel superfamily is separated into the nicotinic receptor superfamily (muscular and neuronal nicotinic, GABA–A and C, glycine and 5–HT3 receptors), the excitatory amino acid superfamily (glutamate, aspartate and kainate receptors) and the ATP purinergic ligand gated ion channels. These families only differ in the number of transmembrane domains found in each subunit.

This work is partially described in Jozwiak *et al.*, ''Displacement and non-linear chromatographic techniques in the investigation of the interaction of noncompetitive inhibitors with an immobilized α3β4 nicotinic acetylcholine receptor liquid chromatographic stationary phase,'' *Anal. Chem.* 74:4618–4624, 2002.

HeadWave Clinical Coil Designed for Magnetic Resonance Elastography

David Moore and Seth Goldstein (NINDS)
DHHS Reference No. E–041–2003/0 filed 27 Mar 2003
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The invention is a novel device for measuring the elasticity of cranially encased tissue. The device is a vibrator coil for use in magnetic resonance elastography (MRE). The vibrator coil is applied to the skull of a human patient using a transcranial Doppler monitoring harness and applies mechanical and acoustic waves through the skull. The propagation of the acoustic wave through brain tissue, coupled to phase alteration of voxel isochromats in the presence of applied motion encoding magnetic field gradients permits the measuring of intracranial tissue elasticity.

HTLV–1 $p30^{II}$ and $p12^{I}$ Proteins as Therapeutic Targets in HTLV–1 Infected Individuals

Genoveffa Franchini and Christophe Nicot (NCI)
DHHS Reference No. E–173–2001/0 filed 19 Aug 2002
Licensing Contact: Sally Hu; 301/435–5606; e-mail: *hus@mail.nih.gov.*

The invention provides methods that use the HTLV–1 protein $p30^{II}$ for identification of new drugs able to contain expansion of HTLV–1 virus infected cells and methods of using the identified compounds for treating patients with retroviral infection. The present invention is based upon discovery that viral proteins $p30^{II}$ and $p12^{I}$ are likely essential for the survival of HTLV–1 infected cells. Working in concert these proteins allow the replication of the infected cells while avoiding immune recognition of the host. The data indicate that both $p30^{II}$ and $p12^{I}$ can be employed as therapeutic targets in containing replication of HTLV–1 infected cells, which in turn will decrease an HTLV–1 infected patient's chance of developing manifestations associated with HTLV–1 infection, *e.g.*, adult T-cell leukemia/lymphoma and tropical spastic paraperesis/HTLV–1 associated myelopathy.

Methods and Compositions for Inhibiting HIV-Coreceptor Interactions

Oleg Chertov (NCI), Joost J. Oppenheim (NCI), Xin Chen (NCI), Connor McGrath(NCI), Raymond C. Sowder II (NCI), Jacek Lubkowski (NCI), Michele Wetzel (EM), and Thomas J. Rogers (EM)
DHHS Reference No. E–190–2000/0 filed 15 Feb 2001; PCT/US02/05063 filed 15 Feb 2002
Licensing Contact: Sally Hu; 301/435–5606; e-mail: *hus@od.nih.gov.*

This invention provides peptides that might be potent inhibitors of HIV replication, in both macrophages and T lymphocytes. Specifically, the inventors have identified peptides, from the HIV–1 gp120 envelope protein, that share structural similarities with chemokines and are shown to block ''docking'' interactions between the HIV–1 envelope protein gp120 and chemokine receptors that function as ''coreceptors'' for HIV entry on the surface of target cells (macrophages and T lymphocytes). The inventors synthesized two peptides (designated 15K and 15D) based on this information and showed that both were effective in competing with chemokines for binding to CCR5- and CXCR4-expressing cells. These peptides efficiently inhibited infection of human monocyte derived macrophages and peripheral blood mononuclear cells by different strains of HIV. The synthesized peptides also inhibited monocyte chemotaxis stimulated by the chemokine RANTES. Thus, these peptides and other molecules based on their structure can be potentially used as inhibitors of HIV. Moreover, these peptides could also have anti-inflammatory and anti-tumor activity. Further, it has been determined that these peptides are multi-tropic in their effects (blocking HIV interactions with multiple co-receptors) for blocking both T cell tropic (lymphotropic) and macrophage tropic (m-tropic) HIV strains.

3–D Video Image-Based Microscopic Precision Robotic Targeting

Jeffrey C. Smith (NINDS), James W. Nash (EM)
DHHS Reference No. E–162–2000/0 filed 22 Dec 2000
Licensing Contact: Michel Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The invention is a robotic software and hardware system that allows a microscopic object such as a living biological cell to be targeted in 3–D

optical space for micromanipulation or probing (*e.g.*, drug testing, transgenic manipulation, nucleation/anucleation). The software permits the selection of an object for targeting by a point and click operation with a computer mouse, and performs the transforms between video pixel space, optical space and micro-manipulator mechanical coordinate space to translate the point and click operation into the precision targeting movements of the micro-positioner. The object is viewed in real time through a microscope system via a video output camera and displayed on a computer terminal.

Applications include a variety of biological laboratory precision tools such as positioning of microelectrodes for electrophysiological recording from living cells, micro-injection and micro-manipulation of cells and micro-delivery of pharmacological agents to cells for drug testing and diagnostics.

The invention may also find application in microelectronics fabrication.

Dated: June 27, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–17077 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 2, 2003, 10 a.m. to July 2, 2003, 11:30 a.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 20, 2003, 68 FR 37011–37012.

The meeting will be held on July 23, 2003. The time and location remain the same. The meeting is closed to the public.

Dated: June 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17071 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ELSI and Genetics.

Date: July 9, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 2204, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheryl M. Corsaro, Ph.D., Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 11: Small Business-Biodefense Vaccines.

Date: July 11, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, DBBD F–31 SEP.

Date: July 15, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Neal B. West, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892–7808, (301) 435–2514, *westnea@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business.

Date: July 15, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joseph Kimm, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–6 (02) Bioengineering Study Section.

Date: July 15, 2003.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Joseph Kimm, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.

Date: July 17–18, 2003.

Time: 8: a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, MS, MSC, Ph.D., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.

Date: July 17–18, 2003.

Time: 8: a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, Washington, DC 20036.

Contact Person: Kenneth A Roebuck, Ph.D., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Research Fellowship Review.

Date: July 17–18, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW. Washington, DC 20036.

Contact Person: Fouad A El-Zaatari, Ph.D., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Research Fellowship Review.

Date: July 17–18, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Syed M. Quadri, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ethical, Legal and Social Implications of ELSI.

Date: July 17–18, 2003.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, Ph.D., Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain, Molecular and Cell.

Date: July 17, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurobiology of Ethanol.

Date: July 17, 2003.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C Debbas, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *eskayr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.

Date: July 17, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih,gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Biology of Parasites.

Date: July 17, 2003.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanna M. Pyper, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Heart Failure.

Date: July 17, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7804, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Prevention & Smoking Cessation.

Date: July 18, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Claire E. Gutkin, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7759, Bethesda, MD 20892, (301) 594–3139.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Immunology and Pathogenesis Study Section.

Date: July 18, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, MS, MSC, Ph.D., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/SBIR SSS S–12.

Date: July 18, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Complex Carbohydrate Resource.

Date: July 20–22, 2003.

Time: 8:30 p.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Georgia Center Hotel, 1197 South Lumpkin Street, Athens, GA 30602.

Contact Person: Mike Radtke, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, (301) 435–1728.

Name of Committee: AIDS and Related Research Integrated Review Group, Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: July 21–22, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Washington Terrae Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Theresa M. Montini, MSW, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220; MSC 7852, Bethesda, MD 20892–7852, (301) 435–1775, *montinit@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–SRB 52R:EB–03–006: Low-Cost Medical Imaging Devices.

Date: July 21, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Eileen W. Bradley, DSC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Psychopathology and Adult Disorders.
Date: July 21, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Dana Plude, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1856, *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VISB (02) Visual Perception Study Section.
Date: July 21, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michael A. Steinmetz, Ph.D., Scientific Review Administration, Center for Scientific Review, National Institutes of Health, Room 5172 MSC 7844, Bethesda, MD 20892, (301) 435–1247, *steinmem@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Learning and Memory: Computational.
Date: July 21, 2003.
Time: 1 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John Bishop, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retina Cell Development and Function.
Date: July 21, 2003.
Time: 2 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael H. Sayre, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Musculoskeletal Dental Special Emphasis Panel.
Date: July 21, 2003.
Time: 3:30 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroaids and Other End-Organ Diseases.
Date: July 21, 2003.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abraham P. Bautista, MS, MSC, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SRB 53R: EB–03–008 Image-Guided Interventions.
Date: July 22–23, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Eileen W. Bradley, DSC, Chief and Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuro–2 SEP.
Date: July 22, 2003.
Time: 10 a.m. to 11:30 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael A. Lang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microbiology Cryptococcus.
Date: July 22, 2003.
Time: 11:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Neal B. West, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892–7808, (301) 435–2514, *westnea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Immunology and Pathogenesis.
Date: July 22, 2003.
Time: 11:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abraham P. Bautista, MS, MSC, Ph.D., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Aspects on Oncogene Regulation.
Date: July 22, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Leda Maria Cummings, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 435–1720, *cumminle@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Renal Sciences SEP.
Date: July 22, 2003.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioinformatics and Related Topics.
Date: July 23, 2003.
Time: 8 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Camilla E. Day, Ph.D., Scientific Review Administrator, Genetic Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Fellowship Review Meeting.
Date: July 23–24, 2003.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Joanne T Fujii, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Immunology & Pathogenesis.

Date: July 23, 2003.
Time: 11:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abraham P. Bautista, MS, MSC, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNA Repair.
Date: July 23, 2003.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Victor A. Fung, Ph.D., Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *vf6n@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Design and Delivery Systems.
Date: July 23, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 16, 16 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).
Contact Person: Leda Maria Cummings, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 435–1720, *cumminle@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Quiescence/G0 in Yeast Program Project.
Date: July 23–24, 2003.
Time: 7 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Gerhard Ehrenspeck, Ph.D., Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspg@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17072 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, RFP No. NHLBI–RR–04–14 Contract Proposal Workgroup.
Date: July 15, 2003.
Time: 8 a.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Guo Zhang, PhD, MPH, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1064, Bethesda, MD 20814–9692, (301) 435–0812, *zhanggu@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure , 93.306, 93.333, National Institutes of Health, HHS)

Dated: June 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17075 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Centers In Minority Institutions Special Emphasis Panel.
Date: July 29, 2003.
Time: 8 a.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Mohan Viswanathan, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1084, MSC 4874, Bethesda, MD 20892–4874, 301–435–0829, *viswanathanm@ncrr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: June 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17076 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01—M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel, CITS, Meeting.

Date: August 6, 2003.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Ellen S. Liberman, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892, (301) 451–2020, *ELLENLIBERMAN@NEI.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 27, 2003

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17069 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Peritoneal Dialysis.

Date: July 21, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8890, *federn@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 30, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17068 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIMH Chemical Synthesis and Drug Supply Program.

Date: July 16, 2003.

Time: 11 am to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17070 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Functional Bowel Disorders.

Date: July 28, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 758, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17073 Filed 7–3–03; 8:45 am]

BILLING CODE 4140–01—M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Disease Special Emphasis Panel, Preclinical Models of Transplantation.

Date: July 24, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *ls38z@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Molecular Therapy Core Centers.

Date: August 5–6, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applicants.

Place: Embassy Suites—BWI Airport, 1300 Concourse Drive, Linthicum, MD 21090.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 749, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848. Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–17074 Filed 7–3–03 8:45 a.m.]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of the CMHS/CSAT Collaborative Program on Homeless Families: Women with Psychiatric, Substance Use, Or Co-Occurring Disorders and Their Dependent Children, Phase II—(OMB No. 0930–0223, Revision)—SAMHSA's Center for Mental Health Services and Center for Substance Abuse Treatment, through a set of cooperative agreements, are conducting a longitudinal, multi-site evaluation study assessing mental health, substance abuse, and trauma interventions received by homeless mothers with psychiatric, substance use, or co-occurring disorders and their dependent children. The study will advance knowledge on appropriate and effective approaches to improving families' residential stability, overall functioning, and decreased risk for violence.

SAMHSA currently has OMB approval for data collection from approximately 1,600 participants recruited from eight sites. At each site, a documented treatment intervention is tested in comparison to an alternative treatment condition. Participants are interviewed at baseline (within two weeks of entering a program) as well as three additional times (3 months after program entry, 9 months after program entry, and 15 months after program entry). Trained interviewers administer the interviews to participating mothers. Information on the children is obtained from the mother. This revision will add several questions to the 15-month interview to determine awareness and use of the Earned Income and Child Tax Credits.

Key outcomes for the mothers are increased residential stability, decreased substance use, decreased psychological distress, improved mental health functioning, increased trauma recovery, improved health, improved functioning as a parent, and decreased personal violence. Outcomes for the children are reduced emotional/behavioral problems and improved school attendance.

Approval is also being sought for a coordinated set of interviews assessing the key ingredients of each program will supplement the participant data collection during the baseline timeframe. The purpose of the program ingredients interviews, administered in a one-time case study protocol format, is to systematically describe each treatment and comparison intervention with the same set of variables at comparable points in treatment. This case study protocol will examine the intervention and comparison program models, staffing, structure, goals, and services, and will include vignettes describing actual families referred to the programs. In-person interviews of program directors, program line staff, and consumers will be administered in either focus group format or through one-on-one sessions. The case study protocol will be geared towards obtaining a standard set of information from each site. If some of these data are available from other sources or do not apply at a particular site, the protocol will be shortened.

The estimated response burden is as follows:

Instrument	Number of respondents	Responses per respondent	Burden per response (hrs)	Total burden hours
Currently—Approved Client Instrument (3-yr. annual average)	2,280			2,503
Additional questions—15-month interview	1,450 [1]	1	.05	73
Pre-Site Visit Questions: Program Managers	22	1	2.0	44
Pre-Site Visit Questions: Program Line Staff	14	1	1.0	14
Interview: Program Managers	22	1	1.0	22
Focus Group: Program Line Staff	100	1	1.67	167
Interview: Unique Staff	22	1	1.0	22

Instrument	Number of respondents	Responses per respondent	Burden per response (hrs)	Total burden hours
Vignette Interview: Senior Staff	22	1	1.0	22
Focus Group: Consumers	200	1	1.4	280
Total	2,616			3,147

[1] Assumes 150 interviews will be completed prior to receipt of approval for the additional questions.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: June 27, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–17020 Filed 7–3–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning July 1, 2003, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone 317/298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2003–63 (*see*, 2003–25 IRB 1037, dated June 23, 2003), the IRS determined the rates of interest for the calendar quarter beginning July 1, 2003, and ending September 30, 2003. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning October 1, 2003, and ending December 31, 2003.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Over-payments (percent)	Corporate overpay-ments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	

Beginning date	Ending date	Under payments (percent)	Over-payments (percent)	Corporate overpay-ments (Eff. 1–1–99) (percent)
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4

Dated: June 30, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–17024 Filed 7–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15506]

Collection of Information under Review by Office of Management and Budget (OMB): OMB Control Numbers 1625–0052 (Formerly 2115–0563), 1625–0057 (Formerly 2115–0578), 1625–0033 (Formerly 2115–0135), 1625–0026 (Formerly 2115–0106), and 1625–0065 (Formerly 2115–0592)

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of five Information Collection Requests (ICRs). The ICRs comprise (1) Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges, (2) Small Passenger Vessels, (3) Display of Fire-Control Plans for Vessels, (4) Approval of Plans and Records for Foreign Vessels Carrying Oil in Bulk, and (5) Offshore Supply Vessels. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before September 5, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2003–15506] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services Division, DOT, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–15506], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by

only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

Information Collection Requests

1. *Title:* Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.

OMB Control Number: 1625–0052.

Summary: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Once every ten years, it subjects such a tank on an unmanned barge 30 years old or older to nondestructive testing.

Need: Under 46 U.S.C. Chapter 37, the Coast Guard is responsible for ensuring safe shipment of dangerous liquid cargoes and has promulgated rules for certain barges to ensure that they meet safety standards.

Respondents: Owners of tank barges.

Frequency: Every 10 years.

Burden: The estimated burden is 72 hours a year.

2. *Title:* Small Passenger Vessels—46 CFR subchapters K and T.

OMB Control Number: 1625–0057.

Summary: The information is necessary for the proper administration and enforcement of the program on safety of commercial vessels as it affects small passenger vessels. Collecting it affects small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

Need: Under the authority of 46 U.S.C. 3305 and 3306, the Coast Guard prescribes rules for the design, construction, alteration, repair, and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard uses the information in this collection to ensure compliance with the rules.

Respondents: Owners and operators of small passenger vessels.

Frequency: On occasion.

Burden: The estimated burden is 366,798 hours a year.

3. *Title*: Display of Fire-Control Plans for Vessels.

OMB Control Number: 1625–0033.

Summary: This collection of information takes the form of the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aids firefighters and damage-control efforts in response to emergencies.

Need: Under the authority of 46 U.S.C. 3305 and 3306, the Coast Guard prescribes rules for the design, construction, alteration, repair and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard uses the information in this collection to ensure compliance with the rules.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 911 hours a year.

4. *Title*: Approval of Plans and Records for Foreign Vessels Carrying Oil in Bulk.

OMB Control Number: 1625–0026.

Summary: The Coast Guard collects plans and records to determine whether foreign tank vessels comply with applicable standards for design and construction.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules for tank vessels, to prevent (among other things) pollution. 33 CFR part 157, subpart B, contains rules on design of tank vessels.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 157 hours a year.

5. *Title*: Offshore Supply Vessels (OSVs)—46 CFR Subchapter L.

OMB Control Number: 1625–0065.

Summary: 46 U.S.C. 3305 and 3306 authorize the Coast Guard to prescribe rules for safety. 46 CFR Subchapter L promulgates such rules for OSVs.

Need: Requirements are necessary to instruct those on board of actions to take in an emergency. These requirements help verify compliance with rules without inspectors' presence to witness routine matters; they even enable OSVs based overseas to stay in compliance without undergoing reinspection here.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 6,175 hours a year.

Dated: June 26, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–16964 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Declaration for Free Entry of Returned American Products

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration for Free Entry of Returned American Products. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20396–20397) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 6, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of

Treasury Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–7285.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Declaration of Free entry of Returned American Products.

OMB Number: 1651–0011.

Form Number: Form-3311.

Abstract: This collection of information is used as a supporting documents which substantiates the claim for duty free status for returning.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit, Individuals.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 210 minutes.

Estimated Total Annual Burden Hours: 51,000.

Estimated Total Annualized Cost on the Public: $198,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: June 26, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–16951 Filed 7–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

New Date for October 2003 Customs Brokers License Examination

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces that Customs and Border Protection has changed the date on which the semi-annual written examination for an individual's broker's license will be held in October 2003.

DATES: The customs broker's license examination scheduled for October 2003 will be held on Tuesday, October 7.

FOR FURTHER INFORMATION CONTACT: Alice Buchanan, Office of Field Operations (202–927–2673).

SUPPLEMENTARY INFORMATION:

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. In the case of an applicant for an individual broker's license, section 641 provides that an examination may be conducted to determine the applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 sets forth the basic requirements for a broker's license and, in paragraph (a)(4), provides that an applicant for an individual broker's license must attain a passing grade on a written examination taken within the 3-year period before submission of the license application prescribed under § 111.12. Section 111.13 sets forth the requirements and procedures for the written examination for an individual broker's license. Paragraph (b) of § 111.13 concerns the date and place of the examination and, prior to the recent amendment to the Customs Regulations discussed below, provided that written customs broker license examinations were given on the first Monday in April and October.

Recognizing that the first Monday in October 2003 (October 6) coincides with the observance of Yom Kippur, Customs and Border Protection (CBP) published in the **Federal Register** (68 FR 31976) on May 29, 2003, an interim rulemaking allowing for the adoption of alternative examination dates in order to avoid conflicts with national holidays, religious observances, and other foreseeable events. Section 111.13(b) was amended to provide that CBP, in those circumstances, could publish a notice in the **Federal Register** changing the examination date from its usual timing. Accordingly, this document announces that CBP has scheduled the October 2003 customs broker's license examination for Tuesday, October 7.

Dated: June 30, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–16952 Filed 7–3–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Fire Suppression Assistance Program.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0067.

Abstract: FEMA provides assistance for fire suppression of forest or grassland fires, which threatens destruction to life and/or improved property as would constitute a major disaster under Fire Suppression Assistance Program (FSAP). FEMA Form 20–10, Financial Status Report, is used by the Grantee during the closeout process to provide FEMA with a final reporting of costs under the FSAP. FEMA Form 90–91, Project Worksheet, is prepared by FEMA and State staff working with the Principal Advisor. Standard Form (SF) 424, Request for Federal Assistance, is used by the State to apply for a grant under the fire suppression assistance declaration. Standard Form 270, Request for Advance or Reimbursement, is used by the State as an alternative to SMARTKLINK II to receive funds. In addition, under section 420 of the Stafford Act there must be a FEMA-State Agreement. Also, a State Administrative Plan must be developed by the State for the Administration of a Fire Suppression Assistance Grant. The plan must designate the State agency that will be responsible for the administration of the program, describe the procedures for the administration of the fire suppression grant, and ensure compliance with the law and regulation applicable to (FSA) grants and ensure the administrative plan is incorporated into the State Emergency Plan. Applicants are required to notify FEMA of all benefits, actual or anticipated, received from other sources for the loss for which they are applying to FEMA for assistance. The State may appeal any cost or eligibility determination under the approved declaration within 60 days after receipt of the notice of action being appealed.

Affected Public: State, Local or Tribal Government and Federal Government.

Number of Respondents: 42.

Estimated Time per Respondent: FEMA-State Agreement and Amendment, 1.5 hours; Standard Form 424, 1 hour; FEMA Form 90–91, 30 minutes; FEMA Form 20–10, 1 hour; Standard Form 270, 30 minutes; State Administrative Plan, 8 hours; State Hazard Mitigation Plan, 160 hours; Appeals, 1 hour; Duplication of Benefits, 1 hour.

Estimated Total Annual Burden Hours: 1972 hours.

Frequency of Response: Other, as needed.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, (Attention: Desk Officer for the Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security), Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or email address *InformationCollections@fema.gov.*

Dated: June 30, 2003.

Vernon Adler,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–17010 Filed 7–3–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1474–DR]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

EFFECTIVE DATE: June 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003:

Lincoln, Nicholas, and Wyoming Counties for Public Assistance.

Boone, Kanawha, Logan, Mason, McDowell, Mingo, and Wayne Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–17008 Filed 7–3–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1474–DR]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

EFFECTIVE DATE: June 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003:

Cabell, McDowell, and Mingo Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–17009 Filed 7–3–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Pre-Disaster Mitigation Program

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice of availability of Pre-Disaster Mitigation competitive grants.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice of the availability of Pre-Disaster Mitigation (PDM) competitive grants for fiscal year (FY) 2003. FEMA will provide PDM funds to assist States and communities to implement a sustained pre-disaster natural hazard mitigation program to reduce overall risk to the population and structures, while also reducing reliance on funding from actual disaster declarations. For FY 2003, these funds will be awarded on a competitive basis with a National priority on funding mitigation projects that address National Flood Insurance Program (NFIP) repetitive flood loss properties.

DATES: States and Federally recognized Indian Tribal governments complete grant applications must be received electronically or on paper by the appropriate FEMA Regional Office on or before midnight, Eastern Time, October 6, 2003. If the non-federal cost share requirement cannot be met by the application deadline due to pending State and/or local legislative approval or fiscal year timelines, the Applicant still must submit the application by October 6, 2003, including a notation in the Budget Narrative and a letter to the FEMA Regional Director providing an explanation and stating that the cost share will be available by November 4, 2003. The Applicant must follow-up with a written certification to the FEMA Regional Director by November 4, 2003 to verify that non-federal cost share funding is approved and available for immediate use if the application is selected by FEMA.

ADDRESSES: FEMA Regional Offices:

FEMA Region I—Serving Maine, New Hampshire, Vermont, Rhode Island, Connecticut, and Massachusetts: J.W. McCormack POCH Building, Boston, MA 02109.

FEMA Region II—Serving New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands: 26 Federal Plaza, Rm. 1307, New York, NY 10278–0001.

FEMA Region III—Serving the District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia: 1 Independence Mall, 6th Floor, 615 Chestnut Street, Philadelphia, PA 19106–4404.

FEMA Region IV—Serving Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: 3003 Chamblee Tucker Road, Atlanta, GA 30341.

FEMA Region V—Serving Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: 536 S. Clark Street, 6th Floor, Chicago, IL 60605.

FEMA Region VI—Serving Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: FRC 800 North Loop 288, Denton, TX 76209–3698.

FEMA Region VII—Serving Iowa, Kansas, Missouri, and Nebraska: 2323 Grand Avenue, Suite 900, Kansas City, MO 64108–2670.

FEMA Region VIII—Serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming: Denver Federal Center, Building 710, Box 25267, Denver, CO 80225–0267.

FEMA Region IX—Serving Arizona, California, Hawaii, Nevada, the Territory of American Samoa, the Territory of Guam, and the Commonwealth of the Northern Mariana Islands: 1111 Broadway, Suite 1200, Oakland, CA 94607–4052.

FEMA Region X—Serving Alaska, Idaho, Oregon, and Washington: Federal Regional Center, 130 228th Street, SW., Bothell, WA 98021–979.

FOR FURTHER INFORMATION CONTACT: Karen Magnino, Program Planning Branch, Mitigation Division, FEMA, 500 C Street, SW., Room 444, Washington, DC 20472, (202) 646–3807 or e-mail: *Karen.Magnino@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Appropriations

$150 million was made available for the PDM grant program under Consolidated Appropriations Resolution, 2003, Public Law (Pub. L.) 108–7. In general, grants are to be awarded on a competitive basis and without reference to State allocations, quotas, or other formula-based allocation of funds. Funds should be used primarily to fund mitigation activities that address natural hazards, but multi-hazard projects and plans may also address hazards caused by non-natural forces.

From the $150 million FY 2003 appropriation for the PDM program, $975,000 was rescinded by a general provision in the law that directs every program, project, and activity be reduced by 0.65 percent. FEMA made available $250,000 ($248,375 after rescission) to each of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa for state and local hazard mitigation planning. A Notice of Funds Availability for the PDM planning grants was published on March 3, 2003. $3.6 million of PDM funds will be available as Disaster Resistant University (DRU) grants, through separate notice, to State, local and Tribal governments for pre-disaster mitigation activities that benefit universities. Approximately $131.5 million is available for PDM competitive grants, technical assistance and program support.

Authorities

The PDM program was authorized by section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5133, as amended by section 102 of the Disaster Mitigation Act of 2000 (DMA), Pub. L. 106–390, 114 Stat. 1552, to assist States and communities to implement a sustained pre-disaster natural hazard mitigation program to reduce overall risk to the population and structures, while also reducing reliance on funding from actual disaster declarations. The PDM program provides a significant opportunity to raise risk awareness and to reduce the Nation's disaster losses through pre-disaster mitigation planning, and the implementation of planned, pre-identified, cost effective mitigation measures that are designed to reduce injuries, loss of life, and damage and destruction of property from all hazards, including damage to critical facilities.

44 CFR Part 201, Hazard Mitigation Planning, establishes criteria for State and local hazard mitigation planning, pursuant to section 322 of the Stafford Act, as amended by section 104 of the DMA. After November 1, 2003, FEMA-approved local mitigation plans will be required as a condition of receiving

PDM grants for local mitigation project grants. FEMA-approved local mitigation plans are not required for project grants awarded with FY 2003 PDM funds. FEMA is in the process of clarifying language to reflect that local mitigation plans are not required for project grants awarded with FY 2003 PDM funds competed as of the date of this Notice. After November 1, 2004, a FEMA-approved Standard State mitigation plan will also be required as a condition of receiving PDM project grants for State and local mitigation activities. The Standard State Mitigation Plan also will be required for non-emergency assistance provided under the Stafford Act, including Public Assistance funds for restoration of damaged facilities and Hazard Mitigation Grant Program funding. Therefore, the development of State and local multi-hazard mitigation plans is key to maintaining eligibility for future FEMA funding.

Applicant Eligibility

Only the state emergency management agencies or a similar office (*i.e.*, the office that has emergency management responsibility) of the State, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, as well as Federally recognized Indian Tribal governments are eligible to apply to FEMA for assistance as Applicants under this program.

In keeping with the intent of FEMA's overall policy, ''Government-to-Government Relations with American Indian and Alaska Native Tribal Governments,'' published at 64 FR 2095, January 12, 1999, Federally recognized Indian Tribal governments may choose to apply for PDM grants either through the State as a Sub-applicant or directly to FEMA as an Applicant. (This choice is independent of a designation under other FEMA grants and programs.) Some State regulations prohibit the State from acting as an Applicant for an Indian Tribe. In such cases, or if the Tribe chooses, the Tribal government may act as its own Applicant. However, when legally permitted, Indian Tribal governments are encouraged to continue existing relationships with the State as the Applicant.

Sub-applicant Eligibility

Other state agencies, Federally recognized Indian Tribal governments, and local governments, to include state recognized Indian Tribes, authorized tribal organizations, and Alaska Native villages are eligible to apply to the Applicant as Sub-applicants. Private non-profit organizations are not eligible to apply as Sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf.

All Applicants and Sub-applicants must be participating in the NFIP if they have been identified through the NFIP as having a Special Flood Hazard Area (SFHA) (a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) has been issued). In addition, the community must not be on probation, suspended or withdrawn from the NFIP.

Grant Application Process

Potential Sub-applicants should consult the official designated point of contact in their State/Tribe for more information pertaining to their application process.

FEMA's electronic grants (e-Grants) system should be used by Applicants and Sub-applicants whenever possible. FEMA has developed the e-Grants system to meet the intent of the eGovernment initiative, authorized by Pub. L. 106–107, passed on November 20, 1999. This initiative requires that all government agencies both streamline grant application processes and provide for the means to electronically create, review, and submit a grant application via the Internet. Use of the e-Grants system will greatly assist FEMA in rapidly reviewing and evaluating the applications for the PDM program. FEMA's e-Grants system incorporates all of the elements noted below for the PDM application in a user-friendly format for both Applicant and Sub-applicant use. The electronic process may substitute for the paper-based process in that Sub-applicants' applications are electronically transmitted to the Applicant for review and action. It will be the Applicant's responsibility to determine which sub-applications will be included in their final application to FEMA. The Applicant also must prioritize the sub-applications included in its application to FEMA. FEMA will use the information transmitted through the e-Grants system to evaluate applications and make award decisions, monitor ongoing performance and manage the flow of federal funds, and to closeout the grant award when all work is completed.

If an Applicant does not use the e-Grants system, the Applicant may submit a paper application, which can be obtained from the FEMA Regional Office. The grant application should include:

- Application for Federal Assistance, Standard Form 424;
- Budget Information—Construction Program, FEMA Form 20–15; or
- Budget Information—Non-Construction Program, FEMA Form 20–20;
- Budget Narrative explaining cost items that have been budgeted;
- Summary Sheet for Assurances and Certification, FEMA Form 20–16;
- Assurances—Non-Construction Program, FEMA Form 20–16A; or,
- Assurances—Construction Program, FEMA Form 20–16B;
- Certification Regarding Lobbying; Debarment, Suspension and Other Responsible Matters; and Drug-Free Workplace Requirements, FEMA Form 20–16C;
- Disclosure of Lobbying Activities, Standard Form LLL;
- Approved Indirect Cost Agreement, if applicable;
- Documentation to support Sub-applicant status as a small, impoverished community, if appropriate, for Federal cost share of up to 90 percent;
- Documentation for the hazard risk assessment determination. This is only required as part of mitigation planning sub-applications;
- Complete Benefit-Cost Analysis documentation for mitigation projects;
- The Applicant should include a Program Narrative for all the sub-applications for which PDM funding is requested. The Applicant must rank each sub-application included in the Program Narrative in order of their priority based on the Applicant's mitigation plan. Only one sub-application should be ranked number 1, 2, 3, etc. The Program Narrative should include:

(1) Individual activity location and name of Sub-Applicant;

(2) Timeline/schedule for each activity;

(3) Individual activity costs, including Federal and non-Federal shares;

(4) Activity-specific scopes of work, including a list of properties, if applicable;

(5) Certification that the Applicant has evaluated the included activities, that they meet all PDM program eligibility criteria, and that they will be implemented in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(6) Responses to the Supplemental Questions for each Sub-applicant activity for competitive ranking and evaluation (Supplemental Questions are available for Applicants and Sub-applicants on the FEMA Web site: *http://www.fema.gov/fima/pdm.shtm*);

(7) Recommendations and documentation regarding the environmental review required by 44 CFR Part 10, Environmental Considerations, and other applicable laws and executive orders, including responses to Established Questions for mitigation projects and complete environmental/historic documentation (the environmental/historic Established Questions are available for Applicants and Sub-applicants on the FEMA Web site: *http://www.fema.gov/fima/pdm.shtm*); and

(8) Assurance that the Sub-application is complete and addresses all program requirements including the Supplemental Questions, thereby meeting the program criteria outlined under section 203(g) of the Stafford Act.

National Priority for FY 2003

For FY 2003, FEMA has established a National priority on funding mitigation projects that address NFIP repetitive flood loss properties. By focusing on the mitigation of NFIP repetitive flood loss properties through acquisition, relocation, elevation, floodproofing, and minor structural projects that save lives and protect property, there will be significant reductions to the NFIP claims payments; improvement to the soundness of the National Flood Insurance Fund; and reduction to disaster housing payments, emergency response expenses, and disaster assistance to fund the repair of the infrastructure. In addition, fewer families will lose wages and fewer businesses will suffer reduced profits as a result of flooding. Also, in the case of property acquisition, there will be increased recreational opportunities and an enhancement of the environment through the creation of open space along rivers and streams. Most importantly, communities and their residents will be safer from flood hazards.

Eligible Activities and Associated Costs

Mitigation Planning. Applicants may request mitigation planning funds to provide mitigation planning assistance to Sub-applicants, including delivery of mitigation planning workshops and assistance in the development of mitigation plans. Applicants and Sub-applicants may request mitigation planning funds to develop State, Tribal, and local multi-hazard mitigation plans that meet the planning criteria outlined in 44 CFR part 201 pursuant to section 322 of the Stafford Act, 42 U.S.C. 5133, including the development of risk assessments for mitigation plans. Proposals may be submitted for countywide or multi-jurisdictional plans since many mitigation issues are better resolved by evaluating hazards in a more comprehensive fashion, however, multi-jurisdictional plans must be adopted by all jurisdictions covered by the plan. Multi-hazard mitigation planning must primarily focus on natural hazards but may also address hazards caused by non-natural forces.

Because FEMA's National priority for FY 2003 is to fund proposals that address NFIP repetitive flood loss properties, communities with NFIP repetitive flood loss properties are urged to address those properties in their risk assessment and planning process.

As part of the competitive grant program, up to 10 percent of the funds requested in the mitigation planning sub-application may be used for information dissemination activities regarding cost-effective mitigation technologies. These activities may include marketing and outreach (brochures and videos, etc.), related to the proposed mitigation planning activity.

Mitigation Projects. Multi-hazard mitigation projects must primarily focus on natural hazards but may also address hazards caused by non-natural forces. Funding is restricted to a maximum of $3 million of Federal funds per project. The following are eligible types of mitigation projects:

- Property acquisition or relocation of hazard prone property for conversion to open space in perpetuity;
- Structural and non-structural retrofitting (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (*e.g.*, elevation, storm shutters, hurricane clips);
- Minor structural hazard control or protection projects that may include vegetation management, and stormwater management (*e.g.*, culverts, floodgates, retention basins); and,
- Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and that do not constitute a section of a larger flood control system.

Mitigation projects must also meet the following general criteria:

(1) Be cost-effective and substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster, consistent with 44 CFR 206.434(c)(5) and related guidance, and have a Benefit Cost Analysis that results in a benefit cost ratio of at least 1.0. Mitigation projects without a Benefit Cost Analysis or with a benefit cost ratio less than 1.0 will not be considered for the PDM competitive grant program. Mitigation projects with higher benefit cost ratios will be more competitive. Applicants may use programs or mechanisms other than the FEMA benefit-cost model to conduct the Benefit Cost Analysis; however the methodology used must be consistent with the FEMA benefit-cost model and approved in advance by FEMA. To facilitate the review and approval of eligible mitigation activities, FEMA has developed an alternative approach to determine cost effectiveness for mitigating certain NFIP repetitive loss properties (information on the alternative approach to determine cost effectiveness is available for Applicants and Sub-applicants on the FEMA Web site: *http://www.fema.gov/fima/pdm.shtm);*

(2) Be in conformance with the current FEMA-approved State hazard mitigation plan;

(3) Solve a problem independently or constitute a functional portion of a solution where there is assurance that the project as a whole will be completed, consistent with 44 CFR 206.434(c)(4);

(4) Be in conformance with 44 CFR Part 9, Floodplain Management and Protection of Wetlands, 44 CFR Part 10, Environmental Considerations;

(5) Not duplicate the assistance that another Federal agency or program has the primary authority to provide, consistent with 44 CFR 206.434(g);

(6) Be located in a community that (a) does not have a SFHA, or (b) is participating in the NFIP if the community has an identified SFHA (a FHBM or FIRM has been issued). The community must not be on probation, suspended or withdrawn from the NFIP; and,

(7) Meet the requirements of Federal, State, and local laws.

As part of the competitive grant, up to 10 percent of the funds requested in the project sub-application may be used for information dissemination activities regarding cost-effective mitigation technologies. These activities may include marketing and outreach (brochures and videos, etc.), related to the proposed mitigation project.

Applicant Management Costs. Applicants may request up to 10 percent of the total planning and project grant funding requested for management costs to support the solicitation, review and processing of PDM sub-applications and awards, and to provide technical assistance to Sub-applicants, including assisting Sub-applicants with Benefit Cost Analysis and environmental and historic documentation. Care must be taken not to provide more technical assistance to one Sub-applicant than

another to avoid the appearance of pre-selection. If requested, indirect costs must be included as part of management costs and must be supported with a current Indirect Cost Rate approved by a Federal Cognizant Agency. However, in no case will the amount of funding awarded for management costs exceed 10 percent of the total amount awarded for mitigation planning and project sub-grants. There is no waiver to increase Applicant Management Costs.

Applicants that request management costs must submit a separate sub-application for their management costs. Management costs will not factor into the competitive evaluation of planning or project proposals submitted by the Applicant and do not need a Benefit Cost Analysis. Funding for Applicant management costs will not be awarded until all planning and project sub-applications have been awarded to ensure that Applicant management costs do not exceed 10 percent of the total planning and project sub-grant awards. Management costs will be cost shared with up to 75 percent of eligible costs provided by FEMA and at least 25 percent provided by a non-Federal source to the maximum Federal share approved by FEMA.

Sub-applicant Management Costs. Sub-applicants may request a maximum of 5 percent of the total grant funding requested for management costs to support approved planning activities or projects. Sub-applicant management costs must be included as part of the planning activity or project costs and, therefore, must be included in the Benefit Cost Analysis for projects. If requested, indirect costs must be included as part of the Management Costs and must be supported with a current Indirect Cost Rate approved by a Federal Cognizant Agency. However, in no case will the total Federal share for any project, including management costs, exceed $3 million. There is no waiver to increase Sub-applicant Management Costs.

Ineligible Activities

Ineligible Mitigation Projects. The following mitigation projects are ineligible for the PDM program:

- Major flood control projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams, waterway channelization; beach nourishment or renourishment;
- Warning systems;
- Engineering designs that are not integral to a proposed project;
- Feasibility studies that are not integral to a proposed project;
- Drainage studies that are not integral to a proposed project;
- Generators that are not integral to a proposed project;
- Phased or partial projects;
- Flood studies or mapping; and,
- Response and communication equipment.

Cost Overruns. The PDM program is a competitive grant program and, therefore, award amounts are final. There are no cost overruns associated with this program.

Cost Share Requirement

FEMA will contribute up to 75 percent of the total amount approved under the grant award, to implement approved activities. At least 25 percent of the total approved under the grant award must be provided from a non-Federal source. Grants awarded to small, impoverished communities may receive a Federal share of up to 90 percent of the total amount approved under the grant award, to implement eligible approved activities. A small, impoverished community must meet all of the following criteria:

- It must be a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city;
- It must be economically disadvantaged, with residents having an average per capita annual income not exceeding 80 percent of national per capita income, based on best available data;
- It must have a local unemployment rate that exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and
- It must meet any other factors as determined by the State in which the community is located.

All non-Federal contributions, cash and in-kind, are accepted as part of the non-Federal share. Except as allowed by Federal statute, no other Federal funds can be used as a cost share. Requirements for in-kind contributions can be found in 44 CFR 13.24. In-kind contributions must be directly related to eligible program costs. The following documentation is required for third-party cash and in-kind contributions: record of source of donor, dates, rates, amounts, and deposit slips for cash contributions.

Evaluation and Award Processes

National Ranking. FEMA will score all eligible activities on the basis of predetermined, objective, quantitative factors to calculate a National Ranking Score. Mitigation planning activities will be scored separately from mitigation projects.

- Ranking factors for competitive mitigation planning activities, listed in order of importance, are:

(1) Sub-applicant's assessment of risks by hazard;

(2) The priority given to the sub-application by the Applicant;

(3) Community mitigation factors such as Community Rating System class, Cooperating Technical Partner, participation as a Firewise Community, and adoption of codes to include Building Code Effectiveness Grading Schedule, International Code Series and National Fire Protection Association 5000 Code;

(4) Status of FEMA-approved local, Standard State/Tribal and Enhanced State/Tribal mitigation plans; and,

(5) Status of the Sub-applicant as a small, impoverished community.

- Ranking factors for mitigation projects, listed in order of importance with the same importance given to numbers 5, 6, and 7, are:

(1) Benefit Cost ratio by hazard based on Applicant's Benefit Cost Analysis;

(2) The priority given to the sub-application by the Applicant;

(3) Community mitigation factors such as Community Rating System class, Cooperating Technical Partner, participation as a Firewise Community, and adoption of codes to include Building Code Effectiveness Grading Schedule, International Code Series and National Fire Protection Association 5000 Code;

(4) Status of FEMA-approved local, Standard State/Tribal and Enhanced State/Tribal mitigation plans;

(5) Percent of the population benefiting (equals the community population divided by the individuals directly benefiting);

(6) Status of the Sub-applicant as a small, impoverished community; and

(7) Whether the project protects critical facilities.

PDM is a competitive grant program in which Applicants compete for limited funds and, as such, the program must emphasize funding eligible cost-effective mitigation activities. Therefore, mitigation projects with higher benefit cost ratios will be more competitive. To enhance proposal competitiveness, Applicants are encouraged to conduct a thorough Benefit Cost Analysis in accordance with this Notice that demonstrates the maximum benefits associated with their mitigation project. Mitigation projects with a benefit cost ratio less than 1.0 will not be considered for the PDM competitive grant program.

Proposals will be ranked in descending order based on the National Ranking Scores, and the highest scored applications representing 150 percent of

funds available nationally for the competitive PDM program will progress to the National Evaluation phase. FEMA will also include the two highest-scoring sub-applications submitted by each State and the two highest scoring sub-applications from Federally recognized Indian Tribal government Applicants in the National Evaluation, if not included in the 150 percent, to ensure a geographic spread of the applications considered. FEMA also may include additional sub-applications that are primarily focused on the National priority to address NFIP repetitive flood loss properties among the sub-applications that progress to the National Evaluation.

National Evaluation. National panels, chaired by FEMA and composed of FEMA headquarters and regional staff, other Federal agency staff, and State representatives, will convene to evaluate the proposals on the basis of additional predetermined qualitative factors to calculate a National Evaluation Score. Mitigation planning activities will be scored separately from mitigation projects.

• Evaluation factors for competitive mitigation planning activities, listed in order of importance with the same importance given to numbers 7 and 8, are:

(1) Feasibility of project methodology and outcome;

(2) Implementation involves reasonable timeline and expectations;

(3) Sufficient staff and resources to implement;

(4) Consistency with the National priority to address FEMA-identified targeted NFIP repetitive flood loss properties;

(5) Community mitigation incentives to include tax credits, waiver of building permit fees, and building codes;

(6) Leverages State and local community involvement through partnerships;

(7) Identifies appropriate outreach activities that advance mitigation;

(8) Serves as a model for other communities;

(9) Innovation and creativity used as part of the best available options; and,

(10) National Ranking score.

• Evaluation factors for mitigation projects, listed in order of importance with the same importance given to numbers 9 and 10, are:

(1) Feasibility of project methodology and outcome;

(2) Implementation involves reasonable timeline and expectations;

(3) Sufficient staff and resources to implement;

(4) Consistency with the National priority to reduce NFIP repetitive flood loss properties; Federal laws and Executive Orders to include National Environmental Policy Act, National Historic Preservation Act, Clean Water Act, Floodplain Management, and Seismic Safety of Federal Buildings; and Federal programs such as American Heritage Rivers Initiative, SBA Mitigation Loan Program and EPA Watershed Initiative;

(5) Community mitigation incentives to include tax credits, waiver of building permit fees, and building codes;

(6) Whether the project protects critical facilities;

(7) Leverages State and local community involvement through partnerships;

(8) Serves as a model for other communities;

(9) Offers durable financial and social benefits;

(10) Identifies appropriate outreach activities that advance mitigation;

(11) Innovation and creativity used as part of the best available options; and,

(12) National Ranking Score.

Selection/Award. For FY 2003 PDM competitive funds, awards will be governed by Consolidated Appropriations Resolution, Pub. L. 108–7, section 203 of the Stafford Act, as amended by section 102 of the DMA, this notice, and program guidance, which will be made available to the public on the FEMA Internet site: *http://www.fema.gov/fima/pdm.shtm*.

The Headquarters Approving Federal Official shall consider the National Evaluation Score, any comments and recommendations from the independent reviewers, the National priority, and other pertinent information to determine which sub-applications to approve. After the sub-applications are selected, FEMA Regional offices will work with Applicants whose sub-applications are selected to implement the grant award.

Environmental/Historic Preservation Review Process

FEMA has determined, in accordance with 44 CFR 10.8(d)(2)(iii), that mitigation planning activities have no impact on the environment and will require no further environmental or historic preservation review. However, mitigation projects will require environmental/historic preservation review. Construction type activities usually require more extensive review, or even an environmental assessment with alternatives addressed and/or historic preservation consultation. For selected mitigation projects that require any level of environmental/historic preservation review, FEMA will not award the grant and the Applicant may not initiate construction until FEMA has completed its review. FEMA will complete the environmental and historic preservation review with the assistance of both the Applicant and the Sub-applicant.

If, after review of the responses to the established environmental/historic questions, supporting documentation, and the consultations with regulatory/resource agencies, FEMA determines that certain compliance measures are required to address the environmental/historic impacts of a selected project, FEMA will notify the Applicant. The Applicant or Sub-applicant may determine whether or not to accept the grant award based on the estimated additional cost of the compliance measures. The amount of the Federal share will not be increased to cover any additional costs. Therefore, it is essential that Applicants and Sub-applicants include costs associated with any anticipated environmental/historic preservation compliance measures or alternatives identified through the development of the environmental/historic preservation documentation in the project budget at the time of application submission.

Reconsideration

At its discretion, FEMA may review a decision where there is an indication of material technical or procedural error that influenced our decision. Requests for reconsideration based upon technical or procedural error should be directed to the Regional Director within 60 days of receiving notice of our decision. The Regional Director will analyze the reconsideration request and make a recommendation to the Director of the Mitigation Division at Headquarters or his designee.

Reporting Requirements

The following reports are required from Applicants that are awarded PDM competitive grants (Grantees):

• *Federal Cash Transaction Reports*. If the Grantee uses the U.S. Department of Health and Human Services (HHS) Payment Management System-SMARTLINK, the Grantee shall submit a copy of the PMS 272 Cash Transaction Report submitted to the HHS) to FEMA.

• *Financial Status Reports*. The Grantee shall submit Financial Status Reports, SF 269 or FF 20–10, to the FEMA regional office within 30 days from the end of the first federal quarter following the initial grant award. The Regional Director may waive this initial report. The Grantee shall submit quarterly financial status reports thereafter until the grant ends. Reports

are due on January 30, April 30, July 30, and October 30.

• *Performance Reports:*

(1) The Grantee shall submit performance reports (no required format) to the FEMA Regional Office within 30 days after end of each quarter. Reports are due January 30, April 30, July 30 and October 30.

(2) Quarterly performance report shall consist of a comparison of actual accomplishment of the approved activity and report the name, completion status, expenditure, and payment-to-date of each approved activity/sub-grant award under the Grant Award.

• *Final Reports.* The Grantee shall submit a Final Financial Status Report and Performance Report within 90 days from Grant Award Performance Period expiration date, per 44 CFR 13.50.

• *Enforcement.* In reference to 44 CFR 13.43 Enforcement, the Regional Director may suspend drawdowns from the HHS/Payment Management System-SMARTLINK or take other remedial actions for non-compliance if quarterly reports are not submitted.

Dated: July 1, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–17043 Filed 7–3–03; 8:45 am]

BILLING CODE 6718–36–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–12]

Notice of Intent To Prepare a Generic Environmental Impact Statement for the World Trade Center Memorial and Redevelopment Plan in the Borough of Manhattan, City of New York, NY and Notice of Public Scoping Meeting and Scoping Comment Period

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of intent.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) and implementing regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), the Lower Manhattan Development Corporation (LMDC), a subsidiary of the Empire State Development Corporation (a political subdivision and public benefit corporation of the State of New York), has determined to prepare a Generic Environmental Impact Statement (GEIS) for the World Trade Center Memorial and Redevelopment Plan in order to evaluate related components of the Plan as a single program. The GEIS will be prepared as a joint NEPA and New York State Environmental Quality Review Act (SEQRA) document intended to satisfy the requirements of both federal and state environmental statutes, including 6 NYCRR 617.10(a). This notice is given in accordance with the provisions and requirements of 40 CFR parts 1500–1508.

Lead Agency: In accordance with section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) and HUD's regulations under 24 CFR part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities), HUD has authorized LMDC to assume authority as the NEPA Responsible Entity. The GEIS will also be prepared in cooperation with The Port Authority of New York and New Jersey (Port Authority). LMDC is the SEQRA Lead Agency. Federal agencies with jurisdiction by law, special expertise, or other special interest should report their interest and indicate their willingness to participate in the GEIS process as a Cooperating Agency.

ADDRESSES: Notice of intent to prepare a GEIS is hereby given and all interested federal, state, and local agencies, groups, and the public are invited to comment on the Draft Scope of the GEIS. Written comments on the Draft Scope are requested and will be accepted until 5 p.m. Eastern Daylight Time (EDT) on August 4, 2003, at the following address:

Lower Manhattan Development Corporation, Attention: Comments WTC Memorial and Redevelopment Plan/DGEIS, One Liberty Plaza, New York, NY 10006.

Written comments may also be submitted until 5 p.m. EDT on August 4, 2003, on LMDC's website, *www.RenewNYC.com,* in ''Planning, Design & Development.''

FOR FURTHER INFORMATION CONTACT: Further information and a copy of the Draft Scope may be obtained by contacting Avalon Simon, Legal Assistant, Lower Manhattan Development Corporation, One Liberty Plaza, New York, NY 10006; Telephone: (212) 962–2300; Fax: (212) 962–2431; E-mail: *wtcenvironmental@renewnyc.com.* A copy of the Draft Scope is also available on LMDC's website: *www.RenewNYC.com* in ''Planning, Design & Development.''

SUPPLEMENTARY INFORMATION:

A. Background

The Proposed Action contemplates the construction of a World Trade Center memorial and memorial-related improvements, up to 10 million square feet of commercial office space, up to one million square feet of retail space, up to one million square feet of conference center and hotel facilities, new open space areas, museum and cultural facilities and certain infrastructure improvements at the World Trade Center site (WTC Site). The WTC Site is bounded generally by Church Street on the east, Liberty Street on the south, West Street on the west and Vesey Street on the north.

The proposed design for the 16-acre former WTC Site would divide it into unequal quadrants in the context of new street configurations: Fulton Street would run east-west through the site and Greenwich Street would run north-south through the site.

The memorial district would encompass the area where the World Trade Center Towers once stood in the southwest quadrant. It would be a sunken area revealing the ''slurry'' wall on the west side of the WTC Site. The preferred memorial design will be identified in the fall of 2003 and will be described in more detail in the GEIS. Pedestrian access would be provided from September 11 Place at the southwest corner of Fulton and Greenwich Streets, from Greenwich Street halfway down the block south to Liberty Street, and from Liberty Street near West Street. A museum and other cultural facilities would also be provided on the southwest quadrant.

The northwest quadrant would be the location of the 1776 Freedom Tower (a 1,776-foot-tall structure), Heroes Park, office space, ground floor retail, and a performing arts center.

The northeast corner of the WTC Site would be the location of a hotel and office building with ground floor retail. In the southeast quadrant will be an open space area called the Wedge of Light and two office towers with street level retail and access to lower level retail on either side of a pedestrian passageway, Cortlandt Way, extending the view corridor of Cortlandt Street west through the WTC Site.

The portions of the Proposed Action scheduled for initial development include the memorial, memorial-related improvements and museum and cultural facilities, the 1776 Freedom Tower, and certain of the retail uses described above. LMDC, the Port Authority, the Port Authority's net lessees, and Studio Daniel Libeskind are

working together to develop design guidelines for these structures.

Alternatives that will be looked at in the GEIS will include a no-build alternative and a reasonable range of other alternatives, such as design alternatives or, if feasible, a '''no impact'' or ''reduced impact'' alternative that might accomplish LMDC's goals for the Proposed Action, as well as additional alternatives generated by the scoping process.

B. Need for the GEIS

The proposed project may constitute an action significantly affecting the quality of the human environment. Therefore, the lead agency has elected to prepare a GEIS pursuant to 24 CFR part 58 and Article 8 of SEQRA and the Regulations promulgated pursuant thereto at 6 NYCRR part 617. Responses to this notice will be used to: (1) determine significant environmental issues; (2) assist in developing the range of alternatives to be considered; (3) identify interested parties that would like to participate in the GEIS process.

C. Scoping

Two public comment meetings on the Draft Scope have been scheduled for Wednesday, July 23, 2003, from 2 p.m. to 5 p.m. EDT and from 6 p.m. to 9 p.m. EDT at the Tribeca Performing Arts Center at the Borough of Manhattan Community College, 199 Chambers Street (between Greenwich and West Streets), New York, NY. The public meeting site is accessible to the mobility-impaired. Interpreter services will be available for the hearing-impaired upon advance request. Public comments on the Draft Scope will be solicited at the meetings. Following the public meetings on the Draft Scope, the public comment period on the Draft Scope will remain open for written comments, which must be received by LMDC by 5 p.m. EDT on August 4, 2003. Comments should be sent to:

Lower Manhattan Development Corporation,
Attention: Comments WTC Memorial and Redevelopment Plan/DGEIS,
One Liberty Plaza,
New York, NY 10006.

Comments on the Draft Scope may also be submitted until 5 p.m. EDT on August 4, 2003, on LMDC's website: *www.RenewNYC.com* in ''Planning, Design & Development'' (visit *http://www.renewnyc.com/plan_des_dev/frm_comments.asp,* then choose the category ''Environmental/Plan Review'').

The Draft Scope will be sent to known interested parties and others requesting copies in advance of the public comment meeting on the Draft Scope. The Draft Scope for the Proposed Action may be viewed at *www.RenewNYC.com* in the section on ''Planning, Design & Development.''

D. GEIS Issues

The Draft Scope identifies the following areas for potential discussion in the GEIS: land use and public policy, socioeconomic conditions; community facilities and services; open space areas and recreational facilities; shadows, historic resources, urban design/visual resources; neighborhood character; hazardous materials; infrastructure, solid waste and sanitation and energy; traffic and parking/transit and pedestrians; air quality; noise; coastal zone; floodplain impacts; construction impacts; and environmental justice.

Questions may be directed to the contact person listed above under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: July 1, 2003.

Roy A. Bernardi,

Assistant Secretary for Community, Planning and Development.

[FR Doc. 03–17164 Filed 7–3–03; 8:45 am]

BILLING CODE 4210–29–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 and/or endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with this application is 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.*), and/or 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(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.)

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species:			
030791	Scovill Zoo	68 FR 15478; March 31, 2003	May 27, 2003.
[Endangered Marine Mammals and] Marine Mammals:			
068430	Arnold W. Goldschlager	68 FR 12709; March 17, 2003	May 27, 2003.

Dated: June 6, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–17022 Filed 7–3–03; 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 6, 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–072787

Applicant: Gordon J.F. Birgbauer, Jr., Algonac, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–072752

Applicant: Earl J. Skarda, Sussex, WI.

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.

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–072739

Applicant: Nyle R. Swast, Templeton, PA.

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–072753

Applicant: Theodore L. Hetrick, Jr., Beavertown, PA.

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–072829

Applicant: Thomas M. Taylor, Edgartown, MA.

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–072865

Applicant: Donald Graham, Holmen, 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–072921

Applicant: Marlowe Kottke, Longville, MN.

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–072925

Applicant: Larry J. Reynolds, Arlington, TX.

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.

PRT–072926

Applicant: Jason R. Ferche, Rice, MN.

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–072605

Applicant: Charles C. Adams, Jr., Jackson, WY.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Davis Strait polar bear population in Canada prior to April 30, 1994, for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: June 6, 2003.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–17023 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Newport Estates Development in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Pacific Communities Builders, Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The Service is considering issuing a 15-year permit to the Applicant that would authorize take of the threatened coastal California gnatcatcher (*Polioptila californica californica*, ''gnatcatcher'') incidental to otherwise lawful activities associated with the construction of a residential development on a 278-acre site in the unincorporated community of Menifee, Riverside County, California. The project would result in the incidental take of three pairs of gnatcatchers on the project site through permanent removal of approximately 106.9 acres of habitat.

We request comments from the public on the permit application and an Environmental Assessment, both of which are available for review. The permit application includes the proposed Habitat Conservation Plan (Plan) and an accompanying Implementing Agreement. The Plan describes the proposed action and the measures that the Applicant will undertake to minimize and mitigate take of the gnatcatcher. To review the permit application or Environmental Assessment, see ''Availability of Documents'' in the **SUPPLEMENTARY INFORMATION** section.

DATES: We must receive your written comments on or before September 5, 2003.

ADDRESSES: Please address written comments to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009. You also may send comments by facsimile to (760) 918–0638.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Goebel, Assistant Field Supervisor, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the Assistant Field Supervisor (**FOR FURTHER INFORMATION CONTACT**). Documents also will be available for public inspection, by appointment, during normal business hours at the above address (*see* **ADDRESSES**) and at the following libraries in Riverside County:

(1) 26982 Cherry Hills Boulevard, Sun City, California 92586; (2) 31516 Rail Road Canyon Road, Canyon Lake, California 92587; (3) 600 West Graham, Lake Elsinore, California 92530); and (4) 3581 Mission Inn Avenue, Riverside, California 92501.

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act as including to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' The Service may, under limited circumstances, issue permits to authorize incidental take (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened species are found in 50 CFR 17.32.

The Applicant proposes to develop housing containing up to 856 residential units on 278 acres. The project site is located between Newport Road and Holland Road, about 1.3 miles west of Interstate 215 and 6 miles east of Interstate 15 in the community of Menifee, Riverside County, California. The project site is surrounded by a combination of agriculture, residential development, and open space with native vegetation. The property is subject to occasional disturbance by human activity, including off-highway vehicle use and fuel modification activities. The proposed project site is not directly connected to habitat being considered by the Service and local agencies for the long-term conservation of the gnatcatcher and does not occur within designated gnatcatcher critical habitat.

A protocol survey for gnatcatchers from December 1998 to February 1999 documented up to three pairs of gnatcatchers onsite. Based on these survey results, the Service concluded that implementation of the proposed project would likely result in take of up to three pairs of gnatcatchers through the permanent removal of 106.9 acres of Riversidean sage scrub habitat on the 278-acre site.

Federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*) were not detected on the project site during 3 years of surveys, 1999–2001. The federally endangered Stephens' kangaroo rat (*Dipodomys stephensi*) may occupy portions of the proposed project site; however, no Stephens' kangaroo rat surveys have been conducted at the project site. Because the proposed project site occurs within the plan area boundary of the approved Habitat Conservation Plan for the Stephens' Kangaroo Rat in Western Riverside County, California (March 1996), compliance with this Plan and its associated implementation agreement will be required prior to any ground-disturbing activities, including vegetation removal.

To mitigate take of gnatcatchers on the project site, the Applicant proposes to purchase credits towards conservation in-perpetuity of 320 acres of Riversidean sage scrub vegetation and three pairs of gnatcatchers from the Joe A. Gonzalez Wilson Creek Conservation Bank in western Riverside County. The conservation bank collects fees that fund a management endowment to ensure the permanent management and monitoring of sensitive species and habitats, including the gnatcatcher.

The Service's Environmental Assessment considers the environmental consequences of four alternatives, including: (1) The Proposed Project Alternative, which consists of issuance of the incidental take permit and implementation of the Plan and Implementing Agreement; (2) the No Action Alternative, which consists of no permit issuance and no development at this time; (3) the Reduced Project Alternative, which consists of issuing a permit for a smaller development, which would impact 69.6 acres of Riversidean sage scrub vegetation instead of 106.9 acres; and (4) the Increased Density Alternative, which would impact all 129.6 acres of Riversidean sage scrub vegetation onsite. The No Action Alternative and Reduced Project Alternative would result in less long-term conservation for the gnatcatcher within western Riverside County, as they would not contribute as much, or at all, to conservation of areas within or directly connected to habitat being considered by the Service and local agencies for long-term conservation of the species. The Increased Density Alternative would leave no habitat remaining onsite, eliminating the possibility that the site could ever be used for gnatcatcher breeding or dispersal.

This notice is provided pursuant to section 10(a) of the Act and the regulations of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of

the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the gnatcatcher. We will make our final permit decision no sooner than 60 days after the date of this notice.

Dated: June 30, 2003.

D. Kenneth McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–17062 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; F–14924–A; CAA–1]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to The Kuskokwim Corporation for lands in Tps. 20 N., Rs. 44 and 45 W., Seward Meridian, located in the vicinity of Red Devil, Alaska, containing 5,010.51 acres. Notice of this decision will also be published four times in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision, shall have until August 6, 2003 to file an appeal.

2. Parties receiving service by certified mail shall have until 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon at (907) 271–3226.

Chris Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–17096 Filed 7–3–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

National Park Service

Forever/NPC Resorts; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 36 CFR 51.23, notice is hereby given that the National Park Service intends to extend the following expiring concession contract for a period of up to one year, or until such time as a new contract is awarded, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The concession authorization expires by its terms on December 31, 2002. The National Park Service has determined that the proposed short-term 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 complete and issue a prospectus leading to the competitive selection of concessioners for a long-term concession contract covering this operation.

Concessioner ID No.	Concessioner name
CC–WASO001–82.	Forever/NPC Resorts, LLC

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202–513–7144.

Dated: February 14, 2003.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 03–16798 Filed 7–3–03; 8:45 am]

BILLING CODE 4312–53–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–477]

In the Matter of Certain Ammonium Octamolybdate Isomers; Notice of Commission Determination To Review a Final Initial Determination Finding No Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on May 15, 2003, finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 20, 2002, based on a complaint filed by Climax Molybdenum Company (''Climax'') against one respondent, Molychem LLC (Molychem). 67 FR 53966. In that complaint, as supplemented, Climax alleged violations of section 337 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain ammonium octamolybdate isomers by reason of infringement of claim 1 of Climax's U.S. Patent No. 5,985,236. Subsequently, the complaint and notice of investigation were amended to add four additional respondents to the investigation: Anhui Wonder Trade Co., Ltd.; Pudong Trans USA, Inc. (Pudong); John S. Conner, Inc. (Conner); and Chem-Met International, Inc. One of these respondents, Conner, was eventually terminated from the investigation as the result of a settlement agreement.

On May 15, 2003, the ALJ issued his final ID on violation and his recommended determination on remedy and bonding. The ALJ found no violation of section 337 because he concluded that claim 1 of the '236

patent was invalid on the basis of an on-sale bar under 35 U.S.C. 102(b). In his ID, the ALJ noted that the '236 patent is currently the subject of a reissue proceeding in the United States Patent and Trademark Office (PTO). Complainant Climax filed a petition for review on May 27, 2003. On May 30 and June 3, 2003, respectively, respondent Molychem and the Commission investigative attorney each filed a response to the petition for review. On June 10, 2003, Climax filed a motion for leave to file a reply to the response of the Commission investigative attorney, including its proposed reply. On June 11, 2003, Molychem filed a motion to strike Climax's motion for leave.

Having examined the record in this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined to review the final ID in its entirety. The Commission has also determined to deny Climax's request for oral argument. In addition, the Commission has determined to deny Climax's motion for leave to file a reply and to deny Molychem's motion to strike without prejudice to renewing any pertinent arguments in their written submissions in the course of the Commission's review of the final ID.

On review, the Commission requests briefing based on the evidentiary record. While the Commission has determined to review the final ID in its entirety, it is particularly interested in briefing on the issues of personal jurisdiction over respondent Pudong, claim construction, invalidity of claim 1 of the '236 patent for anticipation by the Tytko article, and unenforceability of the '236 patent for inequitable conduct, and especially in receiving answers to the following questions:

1. What is the meaning of the term ''octamolybdate'' in claim 1 of the '236 patent? In particular, the Commission wishes the parties to address whether the term refers to a single polyanion containing eight molybdenum and twenty-six oxygen atoms.

2. Whether (a) the Raman spectrum shown in Figure 1(f) of the Tytko article (second from the top) falls within the Raman spectrum set out in Claim 1 of the '236 patent, and (b) whether the Tytko article contains sufficient enabling disclosure with respect to the composition represented by that spectrum so as to be available as prior art.

3. The legal foundation and record support for the existence or non-existence of the specific offer for sale or sale found by the ALJ in his final ID in connection with his finding of the existence of an on-sale bar.

The Commission has also determined to order complainant Climax to file and serve with its main review brief a copy of the file for the reissue application for the '236 patent which is currently pending in the PTO, as well as the files of any other proceedings in the PTO relating to the '236 patent, the reissue application, or the original application for the '236 patent. Complainant Climax is also ordered to file and serve any additions to such files as they are made in the PTO.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the May 15, 2003, recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than close of business on July 14, 2003. Reply submissions must be filed no later than the close of business on July 21, 2003. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* § 201.6 of the Commission's rules of practice and procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.43–210.44 of the Commission's rules of practice and procedure (19 CFR 210.43–210.44).

Issued: June 30, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–17007 Filed 7–3–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: July 15, 2003 at 11 a.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. No. 731–TA–752 (Review) (Crawfish Tail Meat from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 28, 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.

By order of the Commission.

Issued: July 2, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–17247 Filed 7–2–03; 3:42 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Membership of the 2003 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 2003 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRB). The purpose of the PRB is to provide fair and impartial review of SES performance appraisals and bonus recommendations. The PRBs will make recommendations regarding the final performance ratings to be assigned and SES bonuses to be awarded.

FOR FURTHER INFORMATION CONTACT: Debra M. Tomchek, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; 202–514–6788.

Department of Justice, 2003 Senior Executive Service Performance Review Board Members

Office of Legal Counsel

Frits Geursten, Chief of Staff.

Office of Professional Responsibility

Judith B. Wish, Deputy Counsel on Professional Responsibility.

Office of Intelligence Policy and Review

James A. Baker, Counsel for Intelligence Policy.

Margaret A. Skelly-Nolen, Deputy Counsel for Intelligence Operations.

Office of Information and Privacy

Daniel J. Metcalfe, Director (Policy and Litigation).

Antitrust Division

Nancy M. Goodman, Chief, Telecommunications & Media Section.

Edward T. Hand, Acting Deputy Assistant Attorney General.

Catherin G. O'Sullivan, Chief, Appellate Section.

Robert A. Potter, Chief, Legal Policy Section.

Civil Division

Joyce R. Brenda, Deputy Director, Commercial Litigation Branch.

John L. Euler, Deputy Director, Torts Branch.

Vincent M. Garvey, Deputy Director, Federal Programs Branch.

Helene M. Goldberg, Branch Director, Torts Branch.

Eugene M. Thirolf, Director, Office of Consumer Litigation.

Civil Rights Division

James S. Angus, Counsel to the Assistant Attorney General.

DeDe Greene, Executive Officer.

Albert N. Moskowitz, Chief, Criminal Section.

John L. Wodatch, Chief, Environmental Enforcement Section.

Criminal Division

Jodi L. Avergun, Chief, Narcotic and Dangerous Drug Section.

Joseph E. Gangloff, Senior Counsel, Office of International Affairs.

Martha J. Stansell-Gamm, Chief, Computer Crime & Intellectual Property Section.

Mary Lee Warren, Deputy Assistant Attorney General.

Environment and Natural Resources Division

Virginia P. Butler, Chief, Land Acquisition Section.

Brue S. Gelber, Chief, Environmental Enforcement Section.

Eileen Sobeck, Deputy Assistant Attorney General.

Jean E. Williams, Chief, Wildlife and Marine Resources Section.

Justice Management Division

Michael D. Duffy, Director, Telecommunications Services.

Stuart Frisch, General Counsel.

Kathleen A. Haggerty, Director, Debt Collection Management.

Debra M. Tomchek, Director, Human Resources.

Tax Division

David A. Hubbert, Chief, Civil Trial Section, Eastern Region.

Rosemary E. Paguni, Chief, Criminal Enforcement Section, Northern Region.

Robert S. Watkins, Chief, Civil Trial Section, Western Region.

Joseph E. Young, Executive Officer.

Bureau of Prisons

Robin L. Beusse, Chief, Budget Development Administration Division.

Joyce K. Conley, Senior Deputy Assistant Director, Administration Division.

Christopher Erlewine, Assistant Director, General Counsel and Review Division.

Keith E. Hall, Assistant Director, Human Resource Management Division.

John C. Hardwick, Deputy Assistant Director, Information, Policy, and Public Affairs Division.

Thomas R. Kane, Assistant Director, Information, Policy, and Public Affairs Division.

United States Marshals Service

Michael A. Pearson, Acting Assistant Director.

Office of Justice Programs

Gary N. Silver, Director of Administration.

Executive Office for Immigration Review

Charles Adkins-Blanch, General Counsel.

Executive Office for United States Trustees

Jeffrey M. Miller, Associate Director.

Edward F. Cincinnati, Assistant Director for Administration.

National Drug Intelligence Center

Michael T. Horn, Director, National Drug Intelligence Center.

Alcohol, Tobacco, Firearms and Explosives

Steve L. Mathis, Chair Professional Review Board.

Candace E. Moberly, Deputy Assistant Director (Management).

Mark Logan, Assistant Director (Training and Professional Development).

Edgar A. Domench, Deputy Assistant Director, Field Operations (East).

Sherry A. Mahoney,

Acting Executive Secretary, Senior Executive Resources Board.

[FR Doc. 03–16997 Filed 7–3–03; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review; extension of a currently approved collection; requirements: data collection application for the Juvenile Accountability Incentive Block Grant (JAIBG) Program.

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 collected is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 5, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially 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 Rodney Albert, Deputy Director, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

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

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Requirements: Data Collection Application for the Juvenile Accountability Incentive Block Grant Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* New collection; Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State. Public Law 105–119, November 26, 1997, Making Appropriations for the Departments of Commerce, Justice and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for subsequent funded fiscal years.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Fifty-six (56) respondents will complete a 1-hour follow-up information form for each unit of local government receiving JAIBG funds and on funds retained by the State for program expenditure.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total burden hours associated with this information collection 4,200.

For Further Information Contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: June 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–16998 Filed 7–3–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,288 & NAFTA–6104]

International Truck and Engine Corp., a Subsidiary of Navistar International Corp., Springfield, Ohio; Notice of Negative Determination Regarding Application for Reconsideration

On May 9, 2003, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 29, 2003 (68 FR 32124).

The Department initially denied trade adjustment assistance to workers of International Truck and Engine Corporation, a subsidiary of Navistar International Corporation, Springfield, Ohio because the ''contributed importantly'' group eligibility requirement of section 222(3) and section 250 of the Trade Act of 1974 were not met. The TAA investigation revealed that criterion (3) was not met; the company did not import medium, heavy or severe service trucks and aggregate U.S. imports of medium, heavy, and severe service trucks decreased during the relevant period. The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. The subject firm did not import medium, heavy, or severe service trucks, nor was production of medium, heavy, or severe service trucks shifted from the workers' firm to Mexico or Canada.

On reconsideration, as requested by the International Union, United Automobile, Aerospace & Agricultural Workers of America—UAW, Region 2B, and Local Unions 402 and 658, the Department considered several allegations and supporting documentation provided by the union to determine if an error had been made in the original negative determination.

The first allegation concerns a shift in production of final cab assembly from the Springfield plant to an affiliated plant in Escobedo, Mexico. To support this allegation, the union provided testimony from two employees who were aware of ''knockdown cab assemblies'' being shipped to Mexico for final welding.

In response to this allegation, a company official confirmed that the company has cab subassemblies shipped to Mexico from Springfield.

These cabs, used in the production of NGV (New Generation Vehicles) that replaced the company's legacy line of trucks, can be considered directly competitive with those previously welded at the subject facility. However, although the welding of cabs for final truck production at another domestic facility was shifted from Springfield to Mexico, the quantity of cab welding that shifted was and is extremely small relative to cab welding performed at the subject facility, and thus constituted an insignificant portion of overall production at the subject facility.

The union also contends that the Springfield facility and its affiliate in Mexico produce like or directly competitive trucks, and that this fact might be used in support of petitioning workers meeting eligibility requirements for TAA and NAFTA–TAA. To support this claim, the union provides a statement from a company employee who witnessed similar trucks being produced at the Mexican plant, and a set of production schedules that show similar truck lines (4200, 4300, 4400 medium duty trucks) being produced both in Mexico and Springfield.

When contacted in regard to this allegation, the company official confirmed that the Mexican and Springfield plants produce similar trucks. However, the Mexican plant has always produced trucks exclusively for the Mexican market, and its production volume was and is determined exclusively by local consumer demand.

Finally, the union alleged that trucks competitive with those produced in Springfield were imported to the U.S. from Mexico. To support this allegation, they provided a multi-page inventory of truck orders that indicate a large number of trucks sent from the Escobedo facility to the U.S.

A copy of this import inventory was sent to a company official for comment. In his response, it was revealed that the company did in fact import competitive trucks for a brief period in the fall of 2003, as a pre-emptive measure in preparation for a potential strike. The official clarified that the company wanted to make sure that they could meet production orders in the event of a work stoppage and that the Mexican production occurred between September 11 and November 26 of 2002, and that there was a work stoppage at the Springfield facility between October 18 and November 11, 2002. All employees were retained following this stoppage. Further, the Mexican production for this contingency commenced after the relevant period of the investigation. In conclusion the company official confirmed that which was established in the initial investigation; no production was imported by the company to the U.S. in 2000, 2001, and in January through July of 2002.

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 decisions. 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. 03–16887 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,432]

Angus Consulting Management, Inc., a Wholly-Owned Subsidiary of Angus Consulting Management, Ltd., Alpharetta, Georgia; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked March 14, 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 Angus Consulting Management, Inc., a wholly-owned subsidiary of Angus Consulting Management, Ltd., Columbus, Ohio was signed on January 27, 2003, and published in the **Federal Register** on February 24, 2003 (68 FR 8619).

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 Angus Consulting Management, Inc., a wholly-owned subsidiary of Angus Consulting Management, Ltd., Columbus, Ohio engaged in activities related to facility management services (operating a boiler plant). The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioners imply that their layoffs were exclusively attributed to the decision of an unaffiliated firm's decision to shift production to Canada and that, consequently, the petitioning workers should be eligible for trade adjustment assistance.

The fact that service workers are dependant on the production of another facility that may be eligible for trade adjustment assistance does not automatically make the service workers eligible for TAA. Before service workers can be considered eligible for TAA, they must be in direct support of an affiliated TAA certified facility. This is not the case for the workers at Angus Consulting Management, Inc.

The petitioners allege that they should be considered eligible for TAA under a certification for workers at Lucent Technologies, Columbus Works, Columbus, Ohio (TA–W–40,256), as, prior to their employ at Angus Consulting Management, they worked at the trade certified firm.

Worker eligibility that is determined by layoffs that occurred at a firm that precedes the last place of employment is determined by the state on an individual basis to determine if the worker(s) meet the various factors under the existing certification during the relevant period.

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 18th day of June, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16888 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,737; TA–W–50,737A and TA–W–50,737B]

Austin Powder Co., Bend, Oregon, Austin Powder Co., Roseburg, Oregon, and Austin Powder Co., Cleveland, Ohio; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 18, 2003, a state agency representative 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 March 11, 2003, and published in the **Federal Register** on March 26, 2003 (68 FR 14706).

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 Austin Powder Company, Bend, Oregon engaged in storage and distribution 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 initial decision, the Department did not acknowledge the state representative's petition filing on behalf of workers at two additional company facilities other than that of Austin Powder, Bend, Oregon. These two additional facilities are Austin Powder, Roseburg, Oregon, and Austin Powder, Cleveland, Ohio.

Upon further review and contact with a company official, it was revealed that workers at the Roseburg facility perform distribution services and the Cleveland, Ohio facility serves as the corporate headquarters. No production occurs at either facility.

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. 03–16890 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,489]

Corning, Inc., Photonic Technologies Division, Painted Post, New York; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 13, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 25, 2003, and published in the **Federal Register** on March 10, 2003 (68 FR 11408).

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 petition for the workers of Corning, Inc., Photonic Technologies Division, Painted Post, New York 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 customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported amplifiers, dispersion compensation modules, and fiber-based components. The investigation revealed that the subject firm did not import products like or directly competitive with amplifiers, dispersion compensation modules, and fiber-based components during the relevant period of 2001 to 2002, nor did it transfer production abroad.

The petitioner states layoffs are attributable to imports by the company and its customers of VOAs (variable optical attenuators), a type of fiber-based component, and couplers, both of which are components of optical amplifiers. In regard to the company specifically, the petitioner alleges that specific VOA and coupler imports came from Canada.

A company official was contacted regarding company import allegations. The official stated that in fact the company did import VOAs from Canada, but while the subject firm produced VOAs using mechanical technology, the imported VOAs incorporated MEMS technology, or Micro-Electro-Mechanical Systems, which is the integration of mechanical elements, sensors, actuators and electronics on a common substrate. As a result of this distinction, the MEMS VOAs are smaller and much more efficient; further, the imported VOAs are not interchangeable with the VOAs produced at Painted Post in that they cannot be inserted in the same optical amplifiers. In regard to imports of couplers, the company official confirmed that competitive imports did occur in the relevant period; however, couplers comprised of a very small portion of subject plant production.

The petitioner also alleges that customers of the subject firm imported competitive products in the relevant period.

A review of the initial investigation revealed that customers of the subject firm all reported competitive imports in the relevant period, however their trends of import purchases declined more sharply than their purchases from the Painted Post facility, thus they did not increase reliance on imports.

The petitioners also attached a copy of a ''Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance'' for the workers at Corning, Inc., Photonics Technologies/Monroe Photonic, West Henrietta, New York (NAFTA–6130).

A review of that decision shows the workers produced different products than the subject plant products and thus that decision is not relevant to the work performed at the subject plant.

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. 03–16889 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,085]

Fluor Daniel, Facility and Plant Services, Rochester, MN; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 3, 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 Fluor Daniel, Rochester, Minnesota was signed on April 29, 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 Fluor Daniel, Rochester, Minnesota engaged in activities related to facility management services for an unaffiliated firm. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

Having reviewed the initial investigation, it was established that the correct subsidiary of the affected worker group is Fluor Daniel, Facilities & Plant Services, Rochester, Minnesota.

The petitioner quotes a section of the petition instructions concerning ''Secondary Worker Impact'' that defines secondary workers as ''employed by firms that either supply components (emphasis provided by petitioner) to a trade affected firm, or assemble of finish products for a trade-affected firm.'' The petitioner also cites the certification of IBM Storage Technology Division, Rochester, Minnesota, for whom the subject firm workers performed facility management services on a contract basis. The petitioner appears to be implying that the petitioning worker group is eligible for TAA as a secondary supplier to a primary trade-certified firm.

In fact, eligibility on the basis of secondary supplier impact concerns production workers exclusively. However, as has already been noted, the petitioning worker group was not found to have produced a product. In addition, facility management services cannot be construed as a component part of the final product produced by the trade certified firm.

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. 03–16892 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,282]

Gateway Country Store LLC, Asheville, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked May 17, 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 Gateway Country Store LLC, Asheville, North Carolina was signed on April 29, 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 Gateway Country Store LLC, Asheville, North Carolina engaged in activities related to computer sales and related retail services. 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 asserts that the main competition for the Gateway computers sold by the petitioning worker group is a company that produces computers in China. Apparently, the allegation appears to be that this competition is affecting the downturn in production of Gateway computers, and consequently leading to layoffs of the retail workers selling these products.

In order to be eligible for trade adjustment assistance, the subject firm workers must produce an article within the meaning of section 222 of the Trade Act. Workers of Gateway Country Store LLC, Asheville, North Carolina do not produce an article and thus do not meet the eligibility requirements for TAA.

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. 03–16894 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,191]

GetronicsWang Co. LLC, dba Getronics, Valley View, Ohio; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 2, 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 GetronicsWang Co. LLC dba Getronics, Valley View, Ohio was signed on April 23, 2003, and published in the **Federal Register** on May 7, 2003 (68 FR 24503).

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 GetronicsWang Co. LLC dba Getronics, Valley View, Ohio engaged in activities related to data processing and related services for an unaffiliated company: LTV Steel at two work sites in Cleveland, Ohio. 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 their layoffs are attributable to the import impact that led to the bankruptcy, and subsequent TAA certification, of their contracting firm. From a review of the petition in the initial investigation, it appears that the petitioners are attempting to allege that they are applying on a secondary basis, meeting that eligibility criterion on the basis that they worked for a primary impacted trade certified firm.

In order to be eligible for trade adjustment assistance, the petitioning worker group would have to produce a product; data processing and related services do not constitute production of an article as defined in section 222 of the Trade Act. In addition, data processing and related services can neither be construed as a component part of the steel products produced by the trade certified firm, nor does it fit the definition of finishing or assembling the trade certified product, thus petitioning workers can not be considered as secondarily impacted workers.

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. 03–16893 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,037]

Jabil Global Services, Inc., Tampa, FL; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 24, 2003, a company official 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 Jabil Global Services, Inc., Tampa, Florida was signed on March 26, 2003, and published in the **Federal Register** on April 7, 2003 (68 FR 16834).

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 Jabil Global Services, Inc., Tampa, Florida engaged in computer refurbishment (*i.e.*, repair, rebuild, and overhaul) services. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioners allege that repair and rebuilding performed by the subject firm workers constitutes production because the warranty that covered this repair was part of the ''new buy price'' of computers initially produced by the firm that the subject firm performs contract work for.

Repair and refurbishment of products already purchased does not constitute production within the context of eligibility requirements for trade adjustment assistance.

The company official seemed to imply that the subject firm provided ''value added services'' to computer parts through upgrades to circuitry to address specific design problems ''that were related to the original design problems.''

A clarifying call to the company official confirmed that upgrades on these computer and/or components

were covered by a warranty and thus do not concern products that are for sale.

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 18th day of June, 2003.

Elliott S. Kushner

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–16891 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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 Employment and Training Administration is soliciting comments concerning the proposed revision collection of the ETA–9109, Trade Adjustment Assistance Petition Form and its Spanish translation, ETA–9109a, Formulario de Solicitud Ayuda Ajuste Comercial and the associated forms—ETA–9110,Company Endorsement Form for Primary Workers (CEFP); ETA–9111, Company Endorsement Form for Secondary Workers (CEPS); ETA–9112, Customer Questionnaire (CQ); ETA–9113, Supporting Company Request (SCOR); ETA–9114, Supporting Customer Request (SCUR), and ETA–9115, Bid Questionnaire (BQ).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 5, 2003.

ADDRESSES: Erin L. FitzGerald, Program Analyst, Division of Trade Adjustment Assistance, Room C–5311, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–3506 (this is not a toll-free number), fax (202) 693–3584, e-mail *Fitzgerald.Erin@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Adjustment Assistance (TAA) Reform Act of 2002 (Public Law 107–210) amends the Trade Act of 1974 and consolidates two previously authorized worker adjustment assistance programs, Trade Adjustment Assistance (TAA) and North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA) into one TAA program effective November 4, 2002. Section 221(a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the TAA Reform Act of 2002, authorizes the Secretary of Labor and the Governor of each state to accept petitions for certification of eligibility to apply for adjustment assistance. The petitions may be filed by a group of workers, their certified or recognized union or duly authorized representative, employers of such workers, and one-stop operators or one-stop partners. The ETA Form 9109, Trade Adjustment Assistance Petition Form, and ETA–9109a, its Spanish translation, Formulario de Solicitud Ayuda Ajuste Comercial, establish a format that may be used for filing such petitions. The petition form revises and eliminates ETA Form 9042a and its Spanish translation. The Company Endorsement Form eliminates the need for the ETA–9043A, Confidential Data Request form. The Customer and Bid Questionnaires eliminate the need for the ETA–8562a, Customer Survey.

The collection of information is currently being revised to meet the specifications outlined in the legislation of the TAA Reform Act of 2002. While the premise of data collection for the purpose of certification of trade affected workers has remained the same, the specific statutes have altered the type and degree of data collected.

The information obtained by the use of the Company Endorsement Form, and Customer Questionnaire is used by the investigative workgroup of the Division of Trade Adjustment Assistance (DTAA). The findings present an objective set of facts to the Director of the DTAA, other Employment and Training Administration (ETA) officials and the Secretary of Labor with which to make timely decisions regarding whether imports or shift of production of products like or directly competitive with those produced by the petitioning workers' firm contributed importantly to its sales, production, and employment declines, and in turn, determine whether the petitioning workers meet the statutory criteria for eligibility to apply for TAA.

The TAA Reform Act of 2002 makes provisions for additional types of worker groups who are eligible for benefits. This requires additional forms and revisions to questions to determine whether the applicants can be certified. To this extent the DTAA has created the Company Endorsement Form for Secondary Workers for workers who are applying for Secondary Worker assistance as outlined in the TAA Reform Act of 2002.

The DTAA is streamlining the petition process to decrease the time burden on the petitioner. The streamlining of these forms was necessary in order to allow the U.S. Department of Labor to meet the statutory 40 day timeframe for determination on all petitions. An Internet based option for filing petitions will also be available. The petition form and its associated forms had to be altered to allow for petitioners to submit only the information necessary for certification. The forms will remove the need for the majority of petitioners to supply additional supporting data beyond the completed form. In addition, the new legislation authorizes, and the petition form reflects, a consolidation of the TAA program and NAFTA–TAA program, eliminating duplicitous data requests from the petitioner.

The DTAA will implement a data validation procedure to be used to confirm information obtained in the Company Endorsement Form, and Customer and Bid Questionnaires. The sample, conducted randomly, will be based upon ten percent of all petitions filed to ensure compliance with the regulatory and statutory requirements set forth in the TAA Reform Act of 2002.

The Supporting Company Request and the Supporting Customer Request forms will be used to perform the data

validation. This will reduce the overall burden for all respondents. Consequently, ninety percent of companies and customers will submit a significantly reduced Company Endorsement Form, and Customer and Bid Questionnaires.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

This is a notice to seek OMB approval of previously approved forms that have been revised to comply with the TAA Reform Act of 2002. Forms previously approved by OMB under control numbers 1205–0342, 1205–0339, and 1205–0190 were allowed to expire 9/30/03. The institution of the ETA–9109, Trade Adjustment Assistance Petition Form; ETA–9109a, Formulario de Solicitud Ayuda Ajuste Comercial, ETA–9110, Company Endorsement Form for Primary Workers (CEFP); ETA–9111, Company Endorsement Form for Secondary Workers (CEFS); ETA–9112, Customer Questionnaire (CQ); ETA–9113, Supporting Company Request (SCOR); ETA–9114, Supporting Customer Request (SCUR); and ETA–9115, Bid Questionnaire (BQ) provides a format for collecting information necessary for the Department to comply with the requirement that it accept petitions for Trade Adjustment Assistance and issue determinations of eligibility in response to those petitions.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Trade Adjustment Assistance Petition Forms.

OMB Number: 1205–0NEW.

Affected Public: Individuals or Households, Businesses or other for-profit/Farms/Federal, State, Local or Tribal Government.

Cite/Reference	Total respondents	Frequency	Total responses	Average time per response	Burden (hours)
ETA 9109 Petition/ETA 9109a Spanish Petition	4,100	Occasion	4,100	35 minutes	2,392
ETA–9110/Company Endorsement Form for Primary Workers (CEFP).	2,870	Occasion	2,870	30 minutes	1,435
ETA 9111/Company Endorsement Form for Secondary Workers (CEFS).	1,230	Occasion	1,230	20 minutes	410
ETA 9112/Customer Questionnaire (CQ)/ETA 9115/Bid Questionnaire (BQ).	9,840	Occasion	9,840	15 minutes	2,460
ETA 9113/Supporting Company Request (SCOR).	410	Occasion	410	1 hour	410
ETA 9114/Supporting Customer Request (SCUR).	984	Occasion	984	1 hour	984
Totals	19,434		19,434		8,091

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

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 30, 2003.

Timothy F. Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–17055 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance 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 Employment Standards Administration is soliciting comments concerning the proposed collection: Uniform Billing Form (OWCP–92). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 5, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101, *et seq.*, the Black Lung Benefits Act (BLBA) 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* These Acts provide, in addition to compensation for employment-related injury and/or disability, payments to provider institutions for certain non-professional medical treatment and services related to the injury or disability. The Uniform Billing Form (OWCP–92) consists of the industry standard billing form (UB–92), which has been approved by the American Hospital Association, the Centers for Medicare and Medicaid Services, and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), by various other government health care programs, and the private sector, for the purpose of payment to institutional providers of medical services. The OWCP–92 also includes detailed instructions developed by OWCP that provide the information necessary to providers who file bills for services that may be payable under FECA, BLBA and the EEOICPA. This information collection is currently approved for use through December 31, 2003.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility to provide payment covered medical services to injured employees who are covered under the FECA, BLBA and the EEOICPA.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Uniform Billing Form.

OMB Number: 1215–0176.

Agency Number: OWCP–92.

Affected Public: Individual or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 57,679.

Total Responses: 230,716.

Time per Response: 7 minutes.

Frequency: On Occassion.

Estimated Total Burden Hours: 26,925.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice 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 30, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–17056 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by

writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II

None.

Volume III

None.

Volume IV

None.

Volume V

None.

Volume VI

None.

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, 202–512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 25th day of June, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–16548 Filed 7–3–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Public Hearing

ACTION: Notice of public hearing.

SUMMARY: The National Commission on Terrorist Attacks Upon the United States (9–11 Commission) will hold its third public hearing on July 9, 2003 in Washington, DC on ''Terrorism, Al Qaeda, and the Muslim World.'' The Commission will hear testimony from experts on the character of the transnational terrorist threat, the relationships of Arab states to these groups, and the phenomenon of violent extremism within the Muslim community.

DATES: July 9, 2003 from 9 a.m. to 4 p.m. Press availability to follow.

LOCATION: Russell Senate Office Building, Room 253, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Al Felzenberg, (202) 401–1725 or (202) 236–4878 (cellular).

SUPPLEMENTARY INFORMATION: Please refer to the Commission's Web site: *www.9–11commission.gov.*

Dated: July 1, 2003.

Philip Zelikow,

Executive Director.

[FR Doc. 03–17157 Filed 7–3–03; 8:45 am]

BILLING CODE 8800–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act, Meetings

AGENCY HOLDING MEETING: National Science Foundation. National Science Board. Committee on Education and Human Resources.

DATE AND TIME: July 10, 2003 11 a.m.–12 p.m.

PLACE: The National Science Foundation, Stafford One Building, 4201 Wilson Boulevard, Room 130, Arlington, VA 2230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Thursday, July 10, 2003

Open Session (11 a.m. to 12 p.m.)

Consideration of public comments on the Education and Human Resources Task Force on National Workforce Policies for Science and Engineering draft report (NSB 03–69).

FOR INFORMATION CONTACT: Gerard Glaser, Executive Officer, NSB, (703) 292–7000, *http//www.nsf.gov/nsb.*

Gerald Glaser,

Executive Officer.

[FR Doc. 03–17221 Filed 7–02–03; 2:08 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[IA–03–002]

Mr. Lowell S. Trujillo; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Lowell S. Trujillo is not a holder of any Byproduct, Source, or Special Nuclear Material License issued by the Nuclear Regulatory Commission (NRC or Commission)

II

In July 2002, Mr. Lowell S. Trujillo and two other individuals started a business venture in the State of Idaho under the name of Structural Testing and Inspection (STI). In September 2002, the NRC was contacted by a Deputy Sheriff from Custer County, Idaho, to discuss the Deputy Sheriff's having temporarily impounded, and later released, a portable gauge containing NRC-licensed material that was in the possession of STI. The Deputy Sheriff indicated that he had released the gauge when he was shown a bill of sale and an NRC license. In late September 2002, the NRC conducted an

inspection to determine the circumstances surrounding this incident and discovered that STI, which did not hold an NRC license, had purchased and used two portable gauges containing NRC-licensed material. NRC regulations (*i.e.*, 10 CFR 30.3) state, in part, that no person shall receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued pursuant to the regulations in 10 CFR part 30. Based on these circumstances, including the fact that Mr. Trujillo had used, without authorization, a former employer's NRC license, to purchase and use the gauges, the NRC's Office of Investigations (OI) launched an investigation to determine if willful violations of NRC requirements had occurred.

NRC's inspection and investigation of this matter determined the following. On August 28, 2002, Mr. Trujillo purchased and took possession of a Troxler Model 3411 portable moisture-density gauge from Qal-Tek Associates (QTA) for STI's use. Troxler Model 3411 gauges contain byproduct material, including about 10 millicuries of Cesium-137 and about 50 millicuries of Americium-241. At the time, the QTA employee who sold the gauge to Mr. Trujillo was aware that Mr. Trujillo was employed by All Tech Corporation (ATC), an NRC licensee, and believed that the purchase was being made under the authority of ATC's license. Mr. Trujillo advised the QTA employee that the gauge was going to be sold to STI. Approximately one week later, Mr. Trujillo contacted QTA and purchased a second Troxler Model 3411 gauge, again for STI's use. At the time that STI purchased and took possession of these gauges, STI did not have an NRC license, and had not made application to the NRC for a license.

On September 12, 2002, when the Custer County, Idaho, Deputy Sheriff confiscated and impounded one of STI's Troxler gauges during a search for stolen construction equipment, Mr. Trujillo faxed to the Sheriff's office a copy of a bill of sale for the gauge along with a copy of an NRC license held by Reliance Testing and Inspection (RTI). The license, which the NRC later determined was not a current version of RTI's license, listed Mr. Trujillo as the Radiation Safety Officer (RSO) for RTI, and the bill of sale showed the gauge had been purchased by STI. Based on that information, the Deputy Sheriff released the gauge to STI but contacted the NRC to discuss the incident. One day after this incident, Mr. Trujillo contacted the NRC and was told that he was no longer listed as the RSO on RTI's license (Note: Mr. Trujillo also had contacted the NRC in May 2002 and July 2002 regarding whether he was still listed as the RSO on RTI's license).

On September 26, an NRC inspector and the Deputy Sheriff confronted an STI employee at a temporary job site and asked the employee to produce the NRC license under which he was authorized to possess and use a portable gauge that he had with him. The STI employee produced a copy of RTI's (outdated) license which listed Mr. Trujillo as the RSO. The Deputy Sheriff confiscated the gauge. The inspector and Deputy Sheriff contacted Mr. Trujillo about the second gauge in STI's possession, and Mr. Trujillo voluntarily surrendered the second gauge to the Deputy Sheriff. Within a day of this incident, Mr. Trujillo faxed an application for an NRC license for STI to possess and use the gauges. Subsequently, STI has withdrawn its license application.

NRC contacts with ATC and RTI determined that neither company had authorized STI or Mr. Trujillo to use their NRC licenses to purchase or use gauges containing NRC-licensed material. The NRC also determined that Mr. Trujillo is knowledgeable and experienced with respect to NRC's regulation of portable density gauges. He has conducted licensed activities with portable gauging devices for approximately ten years. During that time, he has worked as an assistant RSO and an RSO for different NRC licensees.

On March 10, 2003, the NRC issued letters to STI and Mr. Trujillo describing apparent violations of NRC requirements and, in Mr. Trujillo's case, describing the NRC's concern that he engaged in deliberate misconduct by purchasing and using the gauges without a license. Separate predecisional enforcement conferences were conducted with STI and Mr. Trujillo on March 26, 2003. During his conference, Mr. Trujillo maintained that he thought he was authorized to purchase and use gauges for STI because his name was listed as RSO on RTI's license, even though he had been terminated from RTI's employment in March 2001. He maintained that he did not deliberately violate NRC requirements.

Based on its evaluation of all of the facts and circumstances in this matter, the NRC has concluded that Mr. Trujillo's explanation and assertions are not credible and that he deliberately violated NRC requirements in 10 CFR 30.3 when he purchased and used these gauges without an NRC license. The NRC bases its conclusion, in part, on the following reasons. Mr. Trujillo has approximately ten years of experience in licensed activities including acting as assistant RSO for one licensee and RSO for another licensee. His experience includes submitting an application for an NRC license, and he is familiar with NRC license requirements. In May 2002 and July 2002, when Mr. Trujillo contacted the NRC regarding RTI's license, he never informed the NRC that he was planning to use RTI's license to purchase and use gauges for STI. The purpose of his calls was to ask whether he was still listed as the RSO on RTI's license. Further, it is notable that he did not contact the NRC immediately prior to purchasing the gauges to find out if he was still listed on the RTI license. The gauges were purchased several weeks after his last contact with the NRC. On September 13, 2002, when Mr. Trujillo again contacted the NRC to determine if his name was still on the RTI license, and was told that he was no longer listed as the RSO, Mr. Trujillo did not inform the NRC that STI was already in possession and using the gauges, and STI continued to possess and use the gauges until they were confiscated by the Custer County, Idaho Deputy Sheriff later that month.

III

Based on the above, the NRC has concluded that Mr. Trujillo deliberately violated NRC requirements in 10 CFR 30.3 when he purchased, possessed and used portable gauging devices containing licensed material without an NRC license. To have adequate assurance that the public health and safety will be protected, the NRC must be able to rely on the integrity of individuals to comply with NRC requirements. Mr. Trujillo's actions have raised serious doubts as to whether he can be relied upon to comply with NRC requirements and to be honest with the NRC during its inspections and investigations.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Trujillo were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Trujillo be prohibited from any involvement in NRC-licensed activities for a period of three (3) years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Trujillo's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.3, *It is hereby ordered,* effective immediately, that:

1. Mr. Lowell S. Trujillo is prohibited for three (3) years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20 and 10 CFR 31.6.

2. If Mr. Trujillo is currently involved in NRC-licensed activities, Mr. Trujillo must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Lowell S. Trujillo of good cause.

V

In accordance with 10 CFR 2.202, Mr. Lowell S. Trujillo must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Trujillo or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Trujillo if the answer or hearing request is by a person other than Mr. Trujillo. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Mr. Trujillo requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Trujillo or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Trujillo, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.
Dated this 26th day of June 2003.

Carl J. Paperiello,

Deputy Executive Director for Materials, Research and State Programs.

[FR Doc. 03–17030 Filed 7–3–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–389]

Florida Power and Light Co., et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Florida Power and Light Company, *et al.* (the licensee) to withdraw its May 22, 2003, application for proposed amendment to Facility Operating License No. NPF–16 for the St. Lucie Plant, Unit No. 2, located in St. Lucie County, Florida.

The proposed amendment would have revised the Technical Specifications pertaining to Emergency Core Cooling System subsystem flow balance surveillance testing.

The Commission had previously published a public notice of the proposed amendment to the operating license in the St. Lucie News, the Stuart News, the St. Lucie Tribune, and the Fort Pierce Tribune newspapers on May 27, 2003. However, by letter dated June 9, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 22, 2003, and the licensee's letter dated June 9, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of June 2003.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–17029 Filed 7–3–03; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Requested

AGENCY: Office of Management and Budget

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The Office of Management and Budget (OMB) has recently submitted to OMB for review the following three proposals for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

OMB Control No.: 0348–0004.
Title: Request for Advance or Reimbursement.
Form No: SF–270.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 100,000.
Estimated Time Per Response: 60 minutes.
Needs and Uses: The SF–270 is used to request funds for all nonconstruction grant programs when letters or credit or predetermined advance methods are not used. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0002.
Title: Outlay and Request for Reimbursement for Construction Programs.
Form No: SF–271.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-Profit organizations.
Number of Responses: 40,000.
Estimated Time Per Response: 60 minutes.
Needs and Uses: The SF–271 is used to request reimbursement for all construction grant programs. The Federal awarding agencies and OMB use information reported on this form for general management of Federal assistance awards programs.

OMB Control No.: 0348–0046.
Title: Disclosure of Lobbying Activities.
Form No: SF–LLL.
Type of Review: Extension of a currently approved collection.
Respondents: States, Local Governments, Non-profit organizations, Individuals, Businesses.
Number of Responses: 300.
Estimated Time Per Response: 10 minutes.
Needs and Uses: The SF–LLL is the standard disclosure form for Lobbying paid for with non-Federal funds, as required by the Byrd Amendment, as amended by the Lobbying Disclosure Act of 1995.
Abstract: On April 1, 2003, the Office of Management and Budget (OMB) published a Notice in the **Federal Register** (68 FR 15772) seeking comments on the renewal without change of three standard forms, the SF–270, Requests for Advance or Reimbursement; the SF–271, Outlay Report and Request for Reimbursement for Construction Programs; and the SF–LLL, Disclosure of Lobbying Activities. These forms are required by OMB Circulars A–102, ''Grants and Cooperative Agreements with State and Local Governments,'' and A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations.'' No comments were received.
Copies of these forms can be downloaded from the OMB Grants Management home page (*http://www.whitehouse.gov/OMB/Grants*).
Comments and questions should be directed to the OMB Desk Officer by [insert date 30 days after publication]. 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.

Joseph L. Kull,
Deputy Controller.

[FR Doc. 03–16983 Filed 7–3–03; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26090]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

June 27, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of June, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 24, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

All-American Term Trust Inc. [File No. 811–7352]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On December 30, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. As of March 31, 2003, applicant had 74 shareholders who had not been located. Unclaimed assets have been placed with applicant's transfer agent, and will be held for three years, after which any unclaimed assets will be surrendered to the State of Maryland. Expenses of $15,300 incurred in connection with the liquidation will be paid by applicant.
Filing Date: The application was filed on June 12, 2003.
Applicant's Address: c/o CSC Lawyers Incorporating Service Company, 11 East Chase St., Baltimore, MD 21202.

Merrill Lynch Spectrum Fund, Inc. (Formerly Merrill Lynch Large Cap Spectrum Fund, Inc.) [File No. 811–10469]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.
Filing Date: The application was filed on June 13, 2003.
Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

The Korean Investment Fund, Inc. [File No. 811–6467]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. On June 6, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $59,400 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on June 11, 2003.

Applicant's Address: 1345 Avenue of the Americas, New York, NY 10105.

Millennium Funds, Inc. [File No. 811–8729]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 23, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $50,974 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on June 11, 2003.

Applicant's Address: 8869 Brecksville Rd., Suite C, Brecksville, OH 44141.

Pioneer Science & Technology Fund [File No. 811–9785]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 10, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $14,311 incurred in connection with the liquidation were paid by Pioneer Investment Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on June 12, 2003.

Applicant's Address: 60 State St., Boston, MA 02109.

Templeton Emerging Markets Appreciation Fund, Inc. [File No. 811–8362] Templeton Vietnam and Southeast Asia Fund, Inc. [File No. 811–8632]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 26, 2002, each applicant transferred its assets to Templeton Developing Markets Trust, based on net asset value. Expenses of $194,042 and $306,464, respectively, incurred in connection with the reorganizations were paid by applicants, the acquiring fund and their respective investment advisers.

Filing Date: The applications were filed on June 5, 2003.

Applicants' Address: 500 East Broward Blvd., Suite 2100, Fort Lauderdale, FL 33394–3091.

Templeton Global Government Income Trust [File No. 811–5677]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On August 30, 2002, applicant transferred its assets to Templeton Global Income Fund, Inc., based on net asset value. Expenses of $389,190 incurred in connection with the reorganization were paid by applicant, the acquiring fund and their respective investment advisers.

Filing Date: The application was filed on June 5, 2003.

Applicants' Address: 500 East Broward Blvd., Suite 2100, Fort Lauderdale, FL 33394–3091.

ETF Advisors Trust [File No. 811–21115]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 30, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $4,000 incurred in connection with the liquidation were paid by ETF Advisors, LP, applicant's investment adviser.

Filing Date: The application was filed on June 5, 2003.

Applicant's Address: 153 E. 53rd St., New York, NY 10022.

Credit Suisse European Equity Fund, Inc. [File No. 811–8903]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 25, 2003, applicant transferred its assets to Credit Suisse International Focus Fund, Inc., based on net asset value. Expenses of $135,000 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser, and/or its affiliates.

Filing Date: The application was filed on May 30, 2003.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

Mercury Small Cap Value Fund, Inc. [File No. 811–9955] Mercury U.S. High Yield Fund, Inc. [File No. 811–9981]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On March 24, 2003, applicants transferred their assets to Merrill Lynch Small Cap Value Fund, Inc. and Merrill Lynch U.S. High Yield Fund, Inc., respectively, based on net asset value. Expenses of $190,955 and $186,365, respectively, incurred in connection with the reorganizations were paid by Merrill Lynch Investment Managers, Inc.

Filing Date: The applications were filed on May 23, 2003.

Applicants' Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Berger Growth Fund, Inc. [File No. 811–1382]

Berger Large Cap Growth Fund, Inc. [File No. 811–1383] Berger Omni Investment Trust [File No. 811–4273]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 21, 2003, each applicant transferred its assets to Janus Investment Fund, based on net asset value. Expenses of $928,863, $250,296, and $1,698,340, respectively, were incurred in connection with the reorganizations and were paid by Janus Capital Management LLC and Berger Financial Group LLC, applicants' investment advisers.

Filing Date: The applications were filed on May 28, 2003.

Applicants' Address: 210 University Blvd., Suite 800, Denver, CO 80206.

Berger Investment Portfolio Trust [File No. 811–8046]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 21, 2003, applicant transferred its assets to Janus Investment Fund and Janus Adviser Series, based on net asset value. Expenses of $1,430,479 incurred in connection with the reorganization were paid by Janus Capital Management LLC and Berger Financial Group LLC, investment advisers to applicant.

Filing Date: The application was filed on May 28, 2003.

Applicant's Address: 210 University Blvd., Suite 800, Denver, CO 80206.

Berger Worldwide Funds Trust [File No. 811–7669]

Summary: Applicant, a feeder fund in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On April 21, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $19,569 incurred in connection with the liquidation were paid by Janus Capital Management LLC and Berger Financial Group LLC.

Filing Date: The application was filed on May 28, 2003.

Applicant's Address: 2l0 University Blvd., Suite 800, Denver, CO 80206.

Berger Worldwide Portfolio Trust [File No. 811–7667]

Summary: Applicant, a master trust in a master-feeder structure, seeks an order declaring that it has ceased to be an investment company. On April 21, 2003, applicant made a liquidating distribution to its feeder funds, based on net asset value. Expenses of $24,151 incurred in connection with the liquidation were paid by Janus Capital

Management LLC and Berger Financial Group LLC.

Filing Date The application was filed on May 28, 2003.

Applicant's Address: 210 University Blvd., Suite 800, Denver, CO 80206.

2002 Target Term Trust Inc. [File No. 811–7286]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On November 29, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant has placed the unclaimed assets of its 46 remaining shareholders with PFPC, applicant's transfer agent. Any unclaimed assets remaining at the end of three years will be surrendered to the State of Maryland. Expenses of $10,350 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on April 11, 2003, and amended on June 12, 2003.

Applicant's Address: c/o CSC Lawyers Incorporating Service Company, 11 East Chase St., Baltimore, MD 21202.

BBH International Equity Portfolio [File No. 811–8996], BBH Pacific Basin Equity Portfolio [File No. 811–9659], BBH European Equity Portfolio [File No. 811–9661], BBH U.S. Equity Portfolio [File No. 811–9663], BBH High Yield Fixed Income Portfolio [File No. 811–9971], BBH Broad Market Fixed Income Portfolio [File No. 811–9969]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By April 1, 2003, each applicant's shareholders had redeemed their shares, based on net asset value. Applicants incurred no expenses in connection with the liquidations.

Filing Dates: The applications were filed on May 20, 2003, and amended on June 6, 2003.

Applicants' Address: Brown Brothers Harriman, 40 Water St., Boston, MA 02109.

Corporate High Yield Fund II, Inc. [File No. 811–7103], Corporate High Yield Fund IV, Inc. [File No. 811–10313]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On May 5, 2003, applicants transferred their assets to Corporate High Yield Fund, Inc. and Corporate High Yield Fund V, Inc., respectively, based on net asset value. Expenses of $280,850 and $326,599, respectively, incurred in connection with the reorganizations were paid by each applicant's acquiring fund.

Filing Date: The applications were filed on June 4, 2003.

Applicant's Address: Merrill Lynch Investment Managers, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Voyageur Funds [File No. 811–5267]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 24, 2001, applicant transferred its assets to Delaware Group Government Fund " Delaware American Bond Fund, based on net asset value. Expenses of $44,658 incurred in connection with the reorganization were paid by applicant, the acquiring fund, Delaware Distributors, L.P., applicant's principal underwriter, and Delaware Management Company, applicant's manager.

Filing Dates: The application was filed on January 8, 2003, and amended on February 11, 2003, March 25, 2003, June 2, 2003, and June 18, 2003.

Applicant's Address: Delaware Investments, 2005 Market St., Philadelphia, PA 19130.

Mercury QA Equity Series, Inc. [File No. 811–9611]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 28, 2002, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant has retained assets in the amount of $18,407 to cover its outstanding liabilities. Expenses of $67,513 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on October 10, 2002, and amended on June 5, 2003.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

American Skandia Life Assurance Corporation Variable Account B (Class 2 Sub-Account) [File No. 811–8248]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 18, 2002, the assets of American Skandia Life Assurance Corporation Variable Account B (Class 2 Sub-Account) were consolidated into what was formerly American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Account) and is now known as American Skandia Life Assurance Corporation Variable Account B (the "Separate Account"). In addition, four other sub-accounts of the Separate Account, (Class 3 Sub-Account, Class 7 Sub-Account, Class 8 Sub-Account, and Class 9 Sub-Account), were consolidated into the Separate Account on November 18, 2002 (the "Consolidation"). Each sub-account had been registered as a distinct unit investment trust under the Investment Company Act of 1940 ("1940 Act"). The Consolidation effectively reorganized six separately-registered 1940 Act entities into a single 1940 Act registrant.

Filing Date: The application was filed on December 6, 2002.

Applicant's Address: American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, CT 06484.

American Skandia Life Assurance Corporation Variable Account B (Class 3 Sub-Account) [File No. 811–8884]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 18, 2002, the assets of American Skandia Life Assurance Corporation Variable Account B (Class 3 Sub-Account) were consolidated into what was formerly American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Account) and is now known as American Skandia Life Assurance Corporation Variable Account B (the "Separate Account"). In addition, four other sub-accounts of the Separate Account, (Class 2 Sub-Account, Class 7 Sub-Account, Class 8 Sub-Account, and Class 9 Sub-Account), were consolidated into the Separate Account on November 18, 2002 (the "Consolidation"). Each sub-account had been registered as a distinct unit investment trust under the Investment Company Act of 1940 ("1940 Act"). The Consolidation effectively reorganized six separately-registered 1940 Act entities into a single 1940 Act registrant.

Filing Date: The application was filed on December 6, 2002.

Applicant's Address: American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, CT 06484.

American Skandia Life Assurance Corporation Variable Account B (Class 7 Sub-Account) [File No. 811–09705]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 18, 2002, the assets of American Skandia Life Assurance Corporation Variable Account B (Class 7 Sub-Account) were consolidated into what was formerly American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Account) and is now known as American Skandia Life Assurance Corporation Variable Account B (the "Separate Account"). In addition, four

other sub-accounts of the Separate Account, (Class 2 Sub-Account, Class 3 Sub-Account, Class 8 Sub-Account, and Class 9 Sub-Account), were consolidated into the Separate Account on November 18, 2002 (the ''Consolidation''). Each sub-account had been registered as a distinct unit investment trust under the Investment Company Act of 1940 (''1940 Act''). The Consolidation effectively reorganized six separately-registered 1940 Act entities into a single 1940 Act registrant.

Filing Date: The application was filed on December 6, 2002.

Applicant's Address: American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, CT 06484.

American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Account) [File No. 811–09989]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 18, 2002, the assets of American Skandia Life Assurance Corporation Variable Account B (Class 9 Sub-Account) were consolidated into what was formerly American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Account) and is now known as American Skandia Life Assurance Corporation Variable Account B (the ''Separate Account''). In addition, four other sub-accounts of the Separate Account, (Class 2 Sub-Account, Class 3 Sub-Account, Class 7 Sub-Account, and Class 8 Sub-Account), were consolidated into the Separate Account on November 18, 2002 (the ''Consolidation''). Each sub-account had been registered as a distinct unit investment trust under the Investment Company Act of 1940 (''1940 Act''). The Consolidation effectively reorganized six separately-registered 1940 Act entities into a single 1940 Act registrant.

Filing Date: The application was filed on December 6, 2002.

Applicant's Address: American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, CT 06484.

American Skandia Life Assurance Corporation Variable Account B (Class 8 Sub-Account) [File No. 811–09705]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 18, 2002, the assets of American Skandia Life Assurance Corporation Variable Account B (Class 8 Sub-Account) were consolidated into what was formerly American Skandia Life Assurance Corporation Variable Account B (Class 1 Sub-Account) and is now known as American Skandia Life Assurance Corporation Variable Account B (the ''Separate Account''). In addition, four other sub-accounts of the Separate Account, (Class 2 Sub-Account, Class 3 Sub-Account, Class 7 Sub-Account, and Class 9 Sub-Account), were consolidated into the Separate Account on November 18, 2002 (the ''Consolidation''). Each sub-account had been registered as a distinct unit investment trust under the Investment Company Act of 1940 (''1940 Act''). The Consolidation effectively reorganized six separately-registered 1940 Act entities into a single 1940 Act registrant.

Filing Date: The application was filed on December 6, 2002.

Applicant's Address: American Skandia Life Assurance Corporation, One Corporate Drive, Shelton, CT 06484.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17053 Filed 7–3–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26092; 812–12979]

PBHG Funds, et al.; Notice of Application

July 1, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit a limited liability company to transfer substantially all of its assets to a new series of a registered open-end management investment company in exchange for shares of the series.

APPLICANTS: PBHG Funds (''Trust''), Pilgrim Baxter & Associates, Ltd. (''Pilgrim Baxter''), TS&W Small Cap Value Fund, LLC (''TS&W Fund'') and Thompson, Siegel & Walmsley, Inc. (''TS&W'').

FILING DATES: The application was filed on May 29, 2003 and amended on June 30, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 22, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o John M. Zerr, Esq., Pilgrim Baxter & Associates, Ltd., 1400 Liberty Ridge Drive, Wayne, PA 19087.

FOR FURTHER INFORMATION, CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and currently has 18 series, one of which, the PBHG Small Cap Value Fund (''Fund''), corresponds to the TS&W Fund in terms of investment objective and policies. Pilgrim Baxter, a Delaware corporation, will serve as investment adviser to the Fund pursuant to an investment advisory agreement with the Trust.

2. The TS&W Fund, a Virginia limited liability company, is not registered under the Act in reliance on section 3(c)(1) of the Act. Limited liability company interests (''Interests'') in the TS&W Fund are not registered under the Securities Act of 1933, as amended (the ''Securities Act''), and are held by accredited investors (''Members''). TS&W, a Virginia corporation, is TS&W Fund's sole managing Member and is responsible for the management, operation and administration of the TS&W Fund, including its investment activities. TS&W will serve as the investment sub-adviser to the Fund

pursuant to a sub-advisory agreement with the Trust.

3. Pilgrim Baxter and TS&W each are registered as an investment adviser under the Investment Advisers Act of 1940. Pilgrim Baxter and TS&W each are indirect, wholly owned subsidiaries of Old Mutual plc (''Old Mutual''), a financial services organization based in the United Kingdom.

4. The Fund will seek to provide investors with long-term growth of capital by investing primarily in small capitalization stocks. The Fund will invest at least 80% of its assets in value securities, such as common stocks, of domestic small sized companies, which include companies with equity securities traded in the U.S. securities markets with market capitalizations of $1.3 billion or less at the time of purchase.

5. Applicants propose that, pursuant to an agreement and plan of reorganization (the ''Reorganization Agreement''), the TS&W Fund will transfer to the Fund substantially all of its assets, which will consist of cash and portfolio securities with readily available market quotations and are permissible investments under the investment policies and restrictions of the Fund (''Assets''), less any funds required to pay the liabilities of the TS&W Fund, in exchange for shares (the ''Shares'') of the Fund (the ''Exchange''). Under the Reorganization Agreement, Shares of the Fund delivered to the TS&W Fund will have an aggregate net asset value (''NAV'') equal to the NAV of the Assets transferred by the TS&W Fund to the Fund. Upon the consummation of the Exchange, the Shares of the Fund will be credited to the account of each Member of the TS&W Fund, in an amount equal to the value of the Member's *pro rata* share of the Assets (''Interest'') on the Closing Date. Thereafter, the TS&W Fund will liquidate. The Exchange is scheduled to occur on or about July 25, 2003. No brokerage commissions, fees (except for customary transfer fees, if any) or other remuneration will be paid by the Fund or the TS&W Fund in connection with the Exchange. TS&W will pay the expenses of the TS&W Fund and the Fund will pay its own expenses incurred in connection with the Exchange. Applicants have agreed not to make any material changes to the Reorganization Agreement without prior approval of the Commission or its staff.

6. On May 6, 2003, the board of trustees of the Trust (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), approved the Exchange. In approving the Exchange, the Board concluded that: (a) The Exchange is consistent with the policies of the Fund, as recited in its registration statement, (b) the terms of the Exchange, including the consideration to be received by the Fund, are reasonable and fair and do not involve overreaching on the part of any person concerned, and (c) participation by the Fund in the Exchange is in the best interests of the Fund and its shareholders and the interests of existing shareholders of the Fund will not be diluted as a result of the Exchange. These findings, and the basis upon which such findings were made, are recorded in the minute books of the Trust.

7. With respect to the TS&W Fund, TS&W (as TS&W Fund's managing Member) believes that the Exchange is in the best interests of the TS&W Fund and its Members. The Exchange is required to be approved by Members of the TS&W Fund that represent more than 50% of the aggregate value of the outstanding Interests of the TS&W Fund.

8. The Exchange will not be effected until: (a) The Commission has issued the requested order; (b) Members of the TS&W Fund that represent more than 50% of the aggregate value of the outstanding Interests in the TS&W Fund have consented to: (i) The TS&W Fund's participation in the Exchange and (ii) an amendment to TS&W Fund's operating agreement that permits the TS&W Fund to redeem, immediately prior to the effectiveness of the Exchange, the Interest of any Member that has not consented to the Exchange; and (c) the Trust and the TS&W Fund have received an opinion of counsel substantially to the effect that the Exchange will not result in taxable income to the Fund, the TS&W Fund, or the Members.

Applicants' Legal Analysis

1. Section 17(a)(1) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to the registered investment company any security or other property. Section 2(a)(3) of the Act defines an ''affiliated person'' as, among other things, any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person controlling, controlled by, or under common control with, the other person; any officer, director, partner, copartner or employee of the other person; and, if the other person is an investment company, its investment adviser.

2. Applicants state that the TS&W Fund could be deemed to be an affiliated person of an affiliated person of the Fund because TS&W and Pilgrim Baxter might be deemed to be under the common control of Old Mutual. Thus, applicants state that the proposed Exchange may be prohibited under section 17(a) of the Act.

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, investment advisers that are affiliated persons of each other, common directors, and/or common officers, provided, among other requirements, that the transaction is for no consideration other than cash. Applicants state that the relief provided by rule 17a–7 may not be available for the Exchange because the Exchange will involve consideration other than cash (*i.e.*, Shares of the Fund). Applicants also state that the TS&W Fund may be deemed to be affiliated with the Fund for reasons other than those set forth in rule 17a–7.

4. Rule 17a–8 exempts certain transactions (including mergers, consolidations or purchases or sales of substantially all of the assets of a company) between registered investment companies and eligible unregistered funds, as defined in rule 17a–8 (''Eligible Unregistered Fund''). Applicants state that the relief provided by rule 17a–8 is not available for the Exchange because the TS&W Fund is not a registered investment company or an Eligible Unregistered Fund.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from the provisions of section 17(a) of the Act if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

6. Applicants submit that the terms of the Exchange meet the criteria contained in section 17(b) of the Act. Applicants state that the Shares issued by the Fund will have an aggregate NAV equal to the NAV of the assets acquired from the TS&W Fund, determined in accordance with rule 17a–7 under the Act and the Fund's valuation policies as disclosed in its registration statement. Applicants also state that the investment objective and policies of the Fund are substantially similar to those

of the TS&W Fund. Applicants further state that the Board, including a majority of the Independent Trustees, has approved the Exchange and that the Exchange will comply with rule 17a–7(b) through (g) and the provisions of rule 17a–8 (as those provisions apply to the merger of an Eligible Unregistered Fund with a registered investment company).

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

The Exchange will comply with the terms of paragraphs (b) through (g) of rule 17a–7 and the provisions of rule 17a–8 (as those provisions apply to the merger of an Eligible Unregistered Fund with a registered investment company).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17051 Filed 7–3–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26091; 812–12919]

John Hancock Variable Series Trust I and John Hancock Life Insurance Company; Notice of Application

June 30, 2003.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF THE APPLICATION: John Hancock Variable Series Trust I (the ''Trust'') and John Hancock Life Insurance Company (''John Hancock'') (together, ''Applicants'') request an order (the ''Order'') that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

FILING DATES: The application was filed on January 17, 2003, and June 30, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, John Hancock Place, P.O. Box 111, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company. The Trust currently is comprised of 27 series (the ''Existing Funds''), each with its own investment objectives and policies.[1] The Existing Funds currently serve as the investment medium for variable annuity and variable life insurance contracts issued by John Hancock and John Hancock Variable Life Insurance Company.

2. John Hancock is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as the investment adviser to the Existing Funds. John Hancock, a stock life insurance company and publicly-held financial services company, is a subsidiary of John Hancock Financial Services, Inc., a publicly-traded holding company.

3. The Trust has entered into several investment advisory agreements with John Hancock (''Advisory Agreements'') that were approved by the board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Trustees''), and the Owners of each Existing Fund.[2] Under the terms of the Advisory Agreements, John Hancock provides investment management services for each Existing Fund and may hire one or more sub-advisers (''Sub-Advisers'') to exercise day-to-day investment discretion over all or a portion of the assets of the Existing Funds pursuant to separate investment sub-advisory agreements (''Sub-Advisory Agreements''). Each current Sub-Advisers is, and any future Sub-Adviser will be registered under the Advisers Act or exempt from such registration. Sub-Advisers are recommended to the Board by John Hancock and selected and approved by the Board, including a majority of the Independent Trustees. The Sub-Advisers' fees will be paid out of the advisory fees that the Subadvised Funds pay to John Hancock.

4. Subject to Board review, John Hancock selects Sub-Advisers for the Subadvised Funds, monitors and evaluates Sub-Adviser performance, and oversees Sub-Adviser compliance with the Subadvised Funds' investment objectives, policies, and restrictions. John Hancock recommends Sub-Advisers based upon a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives. John Hancock also recommends to the Board whether a Subadvisory Agreement should be renewed, modified or terminated.

5. Applicants request relief to permit John Hancock, subject to Board approval, and the Trust, on behalf of its series, to enter into and materially amend Sub-Advisory Agreements without approval by the vote of a majority of the outstanding voting securities (as defined in section 2(a)(42) of the Act) of each such series. The requested relief will not extend to a Sub-Adviser that is an affiliated person,

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[1] Applicants also request relief with respect to: (a) Each existing and future series of the Trust and each existing and future series (together with the Existing Funds, the ''Subadvised Funds'') of any other existing or future registered open-end management investment company that (i) is advised by John Hancock or any entity controlling, controlled by, or under common control with John Hancock; (ii) uses the manager of managers arrangement described in the application; and (iii) complies with the terms and conditions in the application; and (b) any entity controlling, controlled by, or under common control with John Hancock that is an investment adviser of a Subadvised Fund and is registered as an investment adviser under the Advisers Act or exempt from such registration. The Trust is the only registered investment company that currently intends to rely on the requested order. If the name of any Subadvised Fund contains the name of a Sub-Adviser (as defined below), the Hancock name (or, if different, the name of the entity controlling, controlled by, or under common control with John Hancock that serves as the primary adviser to such Fund) will precede the name of the Sub-Adviser.

[2] The term ''Owner'' includes variable annuity and variable life contract holders that participate in any insurance company separate account for which a Subadvised Fund's shares serve as a funding medium, as well as the holders of any other shares that the Subadvised Fund has outstanding.

as defined in section 2(a)(3) of the Act, of a Subadvised Fund or of John Hancock, other than by reason of serving as a Sub-Adviser to one or more of the Subadvised Funds (an ''Affiliated Sub-Adviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. The investment structure of the Portfolios is different from that of traditional investment companies. Applicants assert that investors are relying on John Hancock's experience to select one or more Sub-Advisers best suited to achieve a Subadvised Fund's desired investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of the Sub-Advisory Agreements would impose unnecessary costs and delays on the Subadvised Funds, and may preclude John Hancock from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreements will remain subject to the Owner approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any Order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the requested Order, the operation of the Subadvised Fund in the manner described in the application will be approved by a majority of the Subadvised Fund's outstanding voting securities, as defined in the Act, or, in the case of a Subadvised Fund whose Owners purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder prior to offering shares of the Subadvised Fund to the public.

2. Each Subadvised Fund will disclose in its prospectus the existence, substance, and effect of the Order. In addition, each Subadvised Fund relying on the Order will hold itself out to the public as employing the manager of managers arrangement described in the application. The prospectus relating to the Subadvised Fund will prominently disclose that John Hancock has ultimate responsibility (subject to oversight by the Board) to oversee Sub-Advisers and to recommend their hiring, termination and replacement.

3. Before relying on the Order, each Subadvised Fund that sought its Owners' approval to operate in the manner described in the application prior to the date of the Order, and subsequently sold shares based on a prospectus that did not contain the disclosure described in condition 2 above, will provide its Owners with at least 30 days prior written notice of (a) the substance and effect of the Order and (b) the fact that the Subadvised Fund intends to employ the manager of managers arrangement described in the application.

4. Within 90 days of the hiring of a new Sub-Adviser, John Hancock will furnish Owners of the applicable Subadvised Fund all information about the new Sub-Adviser that would be included in a proxy statement. To meet this condition, John Hancock will provide Owners of the applicable Subadvised Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

5. John Hancock will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the Owners of the relevant Subadvised Fund.

6. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. When a change of Sub-Adviser is proposed for a Subadvised Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Fund and its Owners and does not involve a conflict of interest from which John Hancock or an Affiliated Sub-Adviser derives an inappropriate advantage.

8. John Hancock will provide management and certain administrative services to each Subadvised Fund relying on the Order, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets, and, subject to review and approval by the Board, will: (i) Set the Subadvised Fund's overall investment strategies; (ii) evaluate, select, and recommend Sub-Advisers to manage all or a part of the Subadvised Fund's assets; (iii) when appropriate, allocate and reallocate a Sub-Advised Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the Sub-Advisers' investment performance; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Subadvised Fund's investment objectives, policies, and restrictions.

9. No trustee or officer of the Trust, or director or officer of John Hancock will own directly or indirectly (other than through a pooled investment vehicle over which such person does not have control) any interest in a Sub-Adviser except for: (i) Ownership of interests in John Hancock or any entity that controls, is controlled by, or is under common control with John Hancock; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any other publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17052 Filed 7–3–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48089; File No. SR–DTC–2002–06]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendments to a Proposed Rule Change Relating to the Use of the Federal Reserve Banks' Net Settlement System by Settling Banks

June 25, 2003.

I. Introduction

On May 7, 2002, The Depository Trust Company filed with the Securities and Exchange Commission (''Commission'') a proposed rule change File No. SR–DTC–2002–06 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on June 11, 2002.[2] DTC amended the proposal on April 8, 2003,[3] and June 5, 2003.[4] Two comment letters were received.[5] For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change. [6]

II. Description

The Federal Reserve Banks' (''FRBs'') Net Settlement Service (''NSS'') is an automated mechanism for submitting settlement files to the FRBs and is used by entities in private clearing arrangements that provide for the exchange and settlement of transactions on a net basis. In February 2001, DTC adopted NSS as an alternative method for its participants' settling banks to satisfy their end-of-day net-net debits at DTC.[7] Under the NSS process, DTC submits an instruction to a FRB on behalf of the settling bank to have the account of the settling bank charged for their DTC end-of-day net-net debit balance. Use of the NSS eliminates the need for a settling bank to initiate a wire to DTC's FRB account in satisfaction of the settling bank's net-net debit balance at DTC. As originally adopted, use of NSS was on a voluntary basis. Currently 43 of the 79 DTC settling banks are using NSS.

Under the rule change, DTC will require all settling banks to use NSS.[8] Settling banks using NSS will be governed by DTC's procedures, including the End-of-Day Settlement Process section of DTC's Settlement Service Guide.[9] Fees connected with the End-of-Day Settlement Process remain unchanged.

Prior to using NSS, settling banks will be required to sign a Settler Agreement with an FRB which incorporates a requirement that the settling bank agrees to the terms of the Fed's Operating Circular No. 12.[10] The signed Settler Agreement must be on the settling bank's letterhead, must be signed by an authorized signer recognized by the FRB, and must be submitted to a FRB through DTC.

Under Section 6.4 of Operating Circular No. 12, the settlement agent (in this case, DTC) has certain responsibilities regarding the allocation among settling banks using NSS of a claim for indemnity by a FRB. In making such an allocation, DTC will apply the same loss allocation procedures found in Section 4 and 9 of DTC's Rules as it would with respect to losses included in DTC's settlement system.

DTC will send a ''pre-advice'' to each settling bank, notifying the settling bank that DTC is about to send its NSS transmission to the FRB. Each settling bank will be required to acknowledge its net-net debit balance at the end of the day; however, any settling bank that only settles for its own account may elect to not acknowledge its net debit balance at the end of the day.[11] This option will not be made available to settling banks that settle for others because the acknowledgement process includes the option to refuse to pay for a participant for whom the settling bank provides settlement services. Settling banks that settle for others will also be required to acknowledge their net-net credit balances. DTC will not send a settling bank's net-net debit balance to a FRB for collection until the settling bank has acknowledged its balance.

III. Comment Letters

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–DTC–2002–06. This file number should be included on the subject line if e-mail is used. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's web site (*http://www.sec.gov*).[12] Copies of such filing also will be available for inspection and copying at the principal office of the DTC. All submissions

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46028, (June 4, 2002), 67 FR 40035 (June 11, 2002).

[3] The April 8, 2003, amendment deleted the words ''attempt to'' from the sentence in the filing (the sixth paragraph of section 3 of the filing) that indicated DTC would apply the same loss allocation procedures found in DTC's rules as it would with respect to losses incurred in DTC's settlement system.

[4] The June 5, 2003, amendment added two provisions to the filing. The first provision allowed settling banks to opt out of NSS for one business day under certain circumstances. (*See* note 8.) The second provision provided that DTC would send a notification prior to DTC's NSS transmission to its account at the FRB.

[5] Letters from Neil T. Henderson, Senior Vice President, JP MorganChase (July 1, 2002); Daniel L. Goelzer, Counsel for the Association, The Association of Global Custodians (July 2, 2002). The commenters have indicated that they no longer object to the Commission approving DTC's amended filing.

[6] A copy of the text of DTC's proposed rule change, the amendments, and the attached exhibits are available at the Commission's Public Reference Section or through DTC.

[7] Exchange Act Release No. 44176 (April 11, 2001), 66 FR 19821 (April 17, 2001) [File No. SR-DTC–2001–02]. *See also* Important Notice to Participants Nos. 0842 (November 20, 2000) and 2728 (May 2, 2002) and DTC's memorandum (April 14, 2000), all of which are included as part of DTC's filing.

[8] In extenuating circumstances when a settling bank would prefer to opt out of NSS for one business day and to send its wire directly to DTC's account at the FRB in settlement of its net-net debit balance, DTC will exclude that settling bank's debit amount from the NSS transmission that would ordinarily be forwarded to the FRB.

[9] The revised version of the End-of-Day Settlement Process section of the Settlement Service Guide is included as part of DTC's filing.

[10] The Settler Agreement and Operating Circular No. 12 are attached as part of DTC's filing.

[11] Settling banks electing not to acknowledge their debit balance will be required to sign the NSS Settling Bank Acknowledgement Option Form. The form is included as part of DTC's filing. In addition, DTC has made changes to its Settling Bank Failure to Settling Procedures to reflect that certain settling banks may opt out of the acknowledgement requirements. Exchange Act Release No. 41879 (September 15, 1999), 64 FR 51360 (September 22, 1999) [File No. SR–DTC–99–15].

[12] We do not edit personal, identifying information such as names, or e-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

should refer to File No. SR–DTC–2002–06 and should be submitted by July 28, 2003.

IV. Discussion

Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[13] The rule change should allow DTC to reduce settlement risk and improve its safeguarding of securities and funds by reducing the risk that the completion of settlement will be delayed because a settling bank is late or is unable to wire funds to DTC in settlement of its obligations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. Participants and their settling banks have been on notice for over a year that DTC intended to require the use of NSS, and some have been working with DTC during this time to address procedural or operational issues they had with the DTC proposal. Now that those issues have been resolved by DTC's amendments to the proposed rule change, accelerated approval will allow DTC to implement the requirement to use NSS as soon as possible, which in turn will allow DTC to improve its risk reduction efforts.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2002–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17003 Filed 7–3–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48110; File No. SR–NASD–2003–97]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Extension on a Pilot Basis of NASD Rule 7010(k) Relating to Fees for the Trade Reporting and Compliance Engine (TRACE)

June 30, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD filed an amendment to the proposed rule change on June 27, 2003.[3] NASD has designated the proposed rule change as ''establishing or changing a due, fee, or other charge'' under section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 7010(k) relating to fees for the Trade Reporting and Compliance Engine (''TRACE'') prior to the expiration of the pilot program for fees on June 30, 2003. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004. NASD is not proposing any revisions to the current fee structure for TRACE as part of this rule filing. Therefore, as a result of the proposed rule change, the current fee structure would remain in effect to January 31, 2004. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010. System Services

(a) through (j) No Change.

(k) Trade Reporting and Compliance Engine (TRACE)

(Rule 7010(k) shall expire on [June 30, 2003] *January 31, 2004*, unless amended, extended, or permanently adopted by NASD pursuant to SEC approval at or before such date).

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (''TRACE''):

System fees	Transaction reporting fees	Market data fees
From 07/01/02 to 12/31/02: Web Browser Access: $85/month for 1 user ID; $75/month for 2–9 user IDs; $70/month for 2–10+ user, IDs, except If less than 25 trades per month, in October, November, or December 2002–$25/month per user ID	From 07/01/02 to 12/31/02: Trades up to and including $200,000 par value—$0.50/trade; Trades between $201,000 and $999,999 par value—$0.0025 times the number of bonds traded/trade; Trades of $1,000,000 par value or more—$2.50/trade	BTDS Professional Display—$60/month per terminal, except For a period of one calendar month to be announced: Waiver of fee ($0)

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kosha K. Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated June 27, 2003 (Amendment No. 1). In Amendment No. 1, NASD moved the placement of a footnote marked for deletion in the rule filing to clarify that the footnote was part of the actual rule text and not simply a footnote to the rule filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

System fees	Transaction reporting fees	Market data fees
From 01/01/03 to [06/30/03] *01/31/04:* Level I Trade Report Only Web Browser Access—$25/month per user ID Level II Full Service Web Browser Access—$85/month per user ID, except For a period of one calendar month to be announced: Level II Full Service Web Browser Access—$25/month per user ID From 01/01/03 to [06/30/03] *01/31/04:* Trades up to and including $200,000 par value—$0.475/trade; Trades between $201,000 and $999,999 par value—$0.002375 times the number of bonds traded/trade; Trades of $1,000,000 par value or more—$2.375/trade		
CTCI—$25/month/line	From 07/01/02 to 12/31/02: Cancel/Correct—$3/trade, except For October 2002—$1.50/trade For November 2002—$2.25/trade From 01/01/03 to [06/30/03] *01/31/04:* Cancel/Correct—$1.50/trade	BTDS Internal Usage Authorization—$500/month per application/service.
Third Party—$25/month	From 07/01/02 to 12/31/02: ''As of'' Trade Late—$3/trade, except For October 2002—$1.50/trade For November 2002—$2.25/trade From 01/01/03 to [06/30/03] *01/31/04:* ''As of'' Trade Late—$3/trade	BTDS External Usage Authorization—$1,000/month per application/service.
	Browse & Query—$0.05 after first page	BTDS Non-Professional Display—$1/month per terminal.

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to NASD pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to NASD: (a) a TRACE web browser; (b) a Computer-to-Computer Interface (''CTCI'') (either one dedicated solely to TRACE or a multi-purpose line); or (c) a third-party reporting intermediary. Fees will be charged based on the reporting methodology selected by the member.

(A) Web Browser Access

(i) For the period commencing July 1, 2002 and ending December 31, 2002, the charge to be paid by a member that elects to report TRACE data to NASD via a TRACE web browser shall be as follows: for the first user ID registered, a charge of $85 per month; for the next two through nine user IDs registered, a charge of $75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of $70 per month, per user ID from two to ten or more. If a member reports less than 25 trades per month to the TRACE system in October, November, or December 2002, the charge to be paid by a member for the TRACE web browser shall be $25, per such month, per user ID.

(ii) For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004,* the charge to be paid by a member that elects to report TRACE data to NASD via a TRACE web browser shall be as follows: $25 per month, per user ID for Level I Web Trade Report Only Browser Access and $85 per month, per user ID for Level II Full Service Web Browser Access. Notwithstanding the above sentence, following the effective date of increased bond data dissemination as approved by the SEC on January 31, 2003[5], NASD shall announce a period of one calendar month during which the charge for Level II Full Service Web Browser Access shall be $25 per month, per user ID.

(B) through (C) No Change.

(2) Transaction Reporting Fees

For each transaction in corporate bonds that is reportable to NASD pursuant to the Rule 6200 Series, the following charges shall be assessed against the member responsible for reporting the transaction:

(A) Trade Reporting Fee

(i) For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from $0.50 to $2.50 per transaction based on the size of the reported transaction. Trades up to and including $200,000 par value will be charged a $0.50 fee per trade; trades between $201,000 par value and $999,999 par value will be charged a fee of $0.0025 multiplied by the number of bonds traded per trade; and trades of $1,000,000 par value or more will be charged a fee of $2.50 per trade.

(ii) For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004,* a member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from $0.475 to $2.375 per transaction based on the size of the reported transaction. Trades up to and including $200,000 par value will be charged a $0.475 fee per trade; trades between $201,000 par value and $999,999 par value will be charged a fee of $0.002375 multiplied by the number of bonds traded per trade; and trades of $1,000,000 par value or more will be charged a fee of $2.375 per trade.

(B) Cancel or Correct Trade Fee

For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged a Cancel or Correct Trade Fee of $3.00 per canceled or corrected transaction. To provide firms with time to adjust to the new reporting system, the Cancel or Correct Trade Fee will not be charged until the later of October 1, 2002 or 90 days after

[5] [On January 31, 2003, the SEC approved amendments to NASD Rule 6250 of the TRACE rules that will allow NASD to begin disseminating transaction information on more than 4,000 qualifying Investment Grade corporate debt securities. See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (File No. SR–NASD–2002–174).]

the effective date of TRACE. For the month of October 2002, the Cancel or Correct Trade Fee shall be $1.50 per canceled or corrected transaction. For the month of November 2002, the Cancel or Correct Trade Fee shall be $2.25 per canceled or corrected transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004,* a member shall be charged a Cancel or Correct Trade Fee of $1.50 per canceled or corrected transaction.

(C) ''As of'' Trade Late Fee

For the period commencing July 1, 2002 and ending December 31, 2002, a member shall be charged an ''As of'' Trade Late Fee of $3.00 per transaction for those transactions that are not timely reported ''As of'' as required by these rules. To provide firms with time to adjust to the new reporting system, the ''As of'' Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. For the month of October 2002, the ''As of'' Trade Late Fee shall be $1.50 per such transaction. For the month of November 2002, the ''As of'' Trade Late Fee shall be $2.25 per such transaction. For the period commencing January 1, 2003 and ending [June 30, 2003] *January 31, 2004,* a member shall be charged an ''As of'' Trade Late Fee of $3.00 per canceled or corrected transaction.

(D) No Change.

(3) 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, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Extension of Pilot Program for TRACE Fees

NASD is proposing to extend and/or renew the pilot program for TRACE fees that is scheduled to expire on June 30, 2003 to expire on January 31, 2004. NASD believes the additional time will allow it to more fully reassess the overall impact of the TRACE fee structure. As a result of several changes to the TRACE fee structure during the pilot period, additional time to review and analyze the fee structure is necessary. NASD believes that the proposed fee structure for TRACE is reasonable. However, NASD remains committed to reviewing and reassessing the impact of the overall TRACE fee structure over time to ensure that the fees are reasonable and equitable for participants in the TRACE system. NASD expects to submit a rule filing to the SEC prior to the January 31, 2004 expiration date seeking approval of a permanent fee structure for TRACE.

Background

On July 1, 2002, TRACE became effective. On June 28, 2002, the Commission approved proposed NASD fees relating to the operation of the TRACE system (Rule 7010(k)) on a pilot basis for a six-month period expiring on December 28, 2002.[6] As part of that rule filing (Amendment No. 3 to SR–NASD–2002–63), NASD committed to review and reassess the proposed TRACE fees as soon as practicable and within six months after the effective date of TRACE.

On November 15, 2002, NASD submitted a proposed rule change to the SEC to reduce certain TRACE fees for the fourth quarter of 2002 (*i.e.*, the Web Browser Access Fee, the Cancel or Correct Fee, and the ''As of'' Trade Late Fee). These fees were reduced effective as of October 1, 2002.[7]

On December 12, 2002, NASD submitted a proposed rule change to the SEC to extend the pilot program for TRACE fees to February 28, 2003 and to modify the pilot effective January 1, 2003.[8] As of January 1, 2003, NASD divided the Web Browser Access Fee into two service and fee levels—Level I with no access to real-time TRACE data, and Level II with access to real-time TRACE data. The fee for Level I Trade Report Only Web Browser Access is $25 per month, per user ID and the fee for Level II Full Service Web Browser Access is $85 per month, per user ID. A participant may register for a combination of Level I and Level II service based on its usage and needs.

As of January 1, 2003, NASD also reduced trade reporting fees by 5% for 2003 and reduced the Cancel or Correct Fee from $3.00 to $1.50 effective January 1, 2003. The ''As of'' Trade Late Fee continued at $3.00 per trade.

On February 27, 2003, NASD filed, for immediate effectiveness, a rule filing to extend the pilot program for TRACE fees to June 30, 2003.[9]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[10] which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. NASD is proposing to extend the pilot program for TRACE fees to January 31, 2004, to allow NASD greater time to analyze and reassess TRACE fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2) thereunder,[12] because the proposal is ''establishing or changing a due, fee, or other charge'' imposed by NASD. The rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(2) thereunder, and will be operational immediately.

At any time within 60 days of this filing, the Commission may summarily

[6] *See* Securities Exchange Act Release No. 46145 (June 28, 2002), 67 FR 44911 (July 5, 2002) (File No. SR–NASD–2002–63).

[7] On November 22, 2002, the Commission issued a notice that this proposed rule change had become effective upon filing with the Commission. *See* Securities Exchange Act Release No. 46893 (November 22, 2002), 67 FR 72008 (December 3, 2002) (File No. SR–NASD–2002–167).

[8] On December 19, 2002, the Commission issued a notice that this proposed rule change had become effective upon filing with the Commission. *See* Securities Exchange Act Release No. 47056 (December 19, 2002), 67 FR 79205 (December 27, 2002) (File No. SR–NASD–2002–176).

[9] *See* Securities Exchange Act Release No. 47444 (March 4, 2003), 68 FR 11602 (March 11, 2003) (File No. SR–NASD–2003–25).

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2003–97 and should be submitted by July 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17050 Filed 7–3–03; 8:45 am]

BILLING CODE 8010–01–P

[13] *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on June 27, 2003, the date that NASD filed Amendment No. 1.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48106; File No. SR–PCX–2002–62]

Self Regulatory Organizations; The Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change To Amend the PCX's Market Data Revenue Sharing Program for Tape A Securities Traded on the Archipelago Exchange

June 27, 2003.

On October 4, 2002, The Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] a proposed rule change to modify its market data revenue sharing program for Tape A securities by increasing the level of the transaction credits paid with respect to transactions in Tape A securities from 40% to 50% for Users (as defined in the notice) that meet certain requirements. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on November 19, 2002.[2] The Commission received two comments on the proposal.[3] On May 12, 2003, the PCX responded to the comment letters.[4]

The PCX proposes to modify its Tape A market data revenue sharing program by increasing the percentage of transaction credits from 40% to 50%, a percentage that is consistent with similar market data revenue sharing programs operated by other self-regulatory organizations.[5] As set forth in its July 2, 2002 Order of Summary Abrogation (''Abrogation Order''),[6] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the PCX to operate market data revenue sharing programs that place the PCX on substantially similar footing as other self-regulatory organizations.

Thus, after careful review of the proposed rule change, the comment letters, and the PCX Response Letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of section 6 of the Act[8] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the PCX to increase the percentage of transaction credits available from 40% to 50%, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–2002–62), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–17054 Filed 7–3–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 46805 (November 8, 2002), 67 FR 69794.

[3] *See* December 10, 2002 letter from Darla C. Stuckey, Corporate Secretary, The New York Stock Exchange, Inc. (''NYSE''), to Jonathan G. Katz, Secretary, Commission (''NYSE Letter''); December 20, 2002 letter from W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, Commission (''Schwab Letter''). The Schwab Letter comments generally on market data revenue sharing, and does not specifically address the PCX's proposal to increase the percentage of market data revenue sharing in Tape A securities from 40% to 50%. The NYSE Letter incorporates by reference comments filed in previous proposed rule changes on the subject of market data revenue sharing programs, and further objects to the proposed rule change because the NYSE believes the proposal (1) ''would cause NYSE to fund even more PCX payment for [order] flow than it currently does, which payments withdraw orders from the auction for reasons other than best execution''; (2) would present conflict of interest problems for PCX broker-dealers, thereby undermining the discharge of best execution obligations; and (3) ''would provide incentives for markets to purchase prints of trades not executed through their facilities,'' skewing the perception of a particular market's liquidity'' which would result in that market receiving market data revenue in contravention of the Consolidated Tape Association Plan.

[4] *See* May 12, 2002 letter from Kathryn L. Beck, Senior Vice President, General Counsel, Corporate Secretary, and Chief Regulatory Officer, PCX, to Joseph Morra, Special Counsel, Division of Market Regulation, Commission (''PCX Response Letter''). The PCX limited its response to the concerns raised in the NYSE Letter. In short, the PCX (1) stated it does not pay for order flow, and does not fund its market data revenue sharing program directly or indirectly; (2) denied that the market data revenue sharing program conflicts with broker-dealers' best execution obligations; and (3) states that the PCX cannot print trades that are executed elsewhere.

The NYSE Letter, the Schwab Letter, and the PCX Response Letter are available in the Public Reference Room.

[5] *See e.g.*, Securities Exchange Act Release No. 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002)(SR–BSE–2002–10).

[6] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/73–0229]

Walker Investment Fund II SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Walker Investment Fund II SBIC, L.P., 3060 Washington Road, Glenwood, MD 21738, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2002)). Walker Investment Fund II SBIC, L.P. proposes to provide preferred equity security financing to Butterfly.net, Inc., 224 West King Street, Martinsburg, WV 25401. The financing is contemplated to provide the company with the necessary working capital.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Walker Investment Fund II, LLLP, an Associate of Walker Investment Fund II SBIC, L.P., owns an interest in Butterfly.net, Inc. greater than 10 percent. Therefore, this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within 15 days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: June 26, 2003.

Jeffrey D. Pierson,

Associate Administrator For Investment.

[FR Doc. 03–17025 Filed 7–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3514]

State of Alabama

Shelby County and the contiguous Counties of Bibb, Chilton, Coosa, Jefferson, Saint Clair, and Talladega in the State of Alabama, constitute a disaster area due to damages caused by severe storms and flooding that occurred beginning on June 16, 2003 and continuing through June 17, 2003. Applications for loans for physical damage may be filed until the close of business on August 25, 2003 and for economic injury until the close of business on March 29, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned for physical damages is 351411. For economic injury the number is 9W0500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 26, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–17038 Filed 7–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3517]

State of Georgia

Fayette County and the contiguous Counties of Clayton, Coweta, Fulton, and Spalding in the State of Georgia, constitute a disaster area due to damages caused by severe storms and flooding that occurred beginning on June 16, 2003 and continuing through June 17, 2003. Applications for loans for physical damage may be filed until the close of business on August 28, 2003 and for economic injury until the close of business on March 29, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.625
Homeowners Without Credit Available Elsewhere	2.812
Businesses with Credit Available Elsewhere	5.906
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.953
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.953

The number assigned for physical damages is 351711. For economic injury the number is 9W1400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 27, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–17036 Filed 7–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3513]

State of Ohio (And Contiguous Counties in the State of Indiana #3515)

Butler County and the contiguous Counties of Hamilton, Montgomery, Preble and Warren in the State of Ohio, and Dearborn, Franklin, and Union Counties in the State of Indiana constitute a disaster area due to damages caused by severe storms and flooding that occurred beginning on June 13, 2003 and continuing through June 15, 2003. Applications for loans for physical damage may be filed until the close of business on August 25, 2003 and for economic injury until the close of business on March 29, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953

	Percent
Others (including non-profit organizations) with credit available elsewhere	5.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The numbers assigned for physical damage are 351311 for the State of Ohio and 351511 for the State of Indiana. For economic injury the numbers are 9W0300 for Ohio and 9W0400 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 26, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–17037 Filed 7–3–03; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed Collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523. (SC:0019QYX) Comments should be sent to the Agency Clearance Officer no later than September 5, 2003.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Employment Application.

Frequency of Use: On Occasion.

Type of Affected Public: Individuals.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 15,320.

Estimated Total Annual Burden Hours: 15,320.

Estimated Average Burden Hours Per Response: 1.

Need For and Use of Information: Applications for employment are needed to collect information on qualifications, suitability for employment, and eligibility for veterans preference. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–17016 Filed 7–3–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–14873]

Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received by September 5, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–2003–14873 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 am and 5 pm, Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Todd Homan, Competition and Policy Analysis Division, X–55, Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1053.

SUPPLEMENTARY INFORMATION:

Title: Airline Industry Conditions and Air Carriers, 49 U.S.C. 40113 and 41708.

OMB Control Number: 2105–0550.

Type of Request: Extension without change, of a previously approved collection.

Abstract: The Department of Transportation is collecting from major air carriers a variety of information about their economic performance. The purpose of this collection is to permit the Department to monitor the effects of the war in Iraq on the airlines. The Department needs to be able to monitor industry development and to use its authority as appropriate to address industry problems arising during the war.

By Order 2003–4–12, issued April 16, 2003, DOT imposed certain reporting requirements on thirteen airlines, on a twice-weekly basis, through June 2003. By this action, DOT is extending these requirements through September 30, 2003, but limiting submissions to once a week. While the war in Iraq has ended, the industry's poor operating results continued well past the cessation of major military operations. While there are recent preliminary indications that the airline industry is now stabilizing, the progress of recovery to date is not adequate to remove concerns about the industry's financial status and DOT finds it appropriate to continue our monitoring activities, to confirm that recovery continues unabated.

Respondents: Air Carriers.

Estimated Number of Respondents: 13.

Estimated Total Burden on Respondents: 221 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on June 27, 2003.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 03–16974 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No.OST–2003–15511]

Request for Comments

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Request for comments.

SUMMARY: Under part 375 of the Department's regulations, which covers commercial aviation operations other than common carriage, persons seeking to operate foreign civil aircraft within the United States involving the carriage of persons, property or mail ''for remuneration or hire'' must obtain a permit from the Department of Transportation. The National Business Aviation Association (NBAA) has written to the Department requesting a policy determination that certain types of operations that companies it represents might perform (such as carriage of a company's own officials and guests, or aircraft time sharing, interchange, or joint ownership arrangements between companies) do not, in fact, constitute operations ''for remuneration or hire''. A favorable Department response would eliminate the need for the companies involved to secure a permit for such operations.

The Department of Transportation is soliciting comments from interested parties regarding the NBAA request for a policy determination. The Department intends to consider any such comments in developing a response to the NBAA. The text of the NBAA letter is attached to this notice, and copies of other recent correspondence between the NBAA and the Department regarding part 375 have been placed in the docket.

DATES: Comments to the proposal should be filed on or before July 28, 2003.

ADDRESSES: Comments should be filed in Docket OST–2003–15511 and sent:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001;

(2) By hand delivery to room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329; or

(3) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: George Wellington, Chief of U.S. and Foreign Carrier Licensing Division, Office of International Aviation, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2391.

Dated: June 27, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

BILLING CODE 4910–62–P

NATIONAL BUSINESS AVIATION ASSOCIATION, INC.

1200 EIGHTEENTH STREET NW, SUITE 400
WASHINGTON, DC 20036-2527
TEL: (202) 783-9000 • FAX: (202) 331-8364
E-MAIL: info@nbaa.org • WEB: www.nbaa.org

May 16, 2003

The Honorable Read Van de Water
Assistant Secretary for Aviation
And International Affairs
U.S. Department of Transportation
400 Seventh Street, S.W., Suite 10232
Washington, DC 20590

Re: **Business Aviation**
Part 375 Policy

Dear Secretary Van de Water:

Thank you for convening the meeting on Wednesday to enable us to elaborate upon the non-commercial nature of business aviation generally with specific reference to Part 375. Given the global nature of business aviation today, the Department's interpretation of Part 375 has had, and will continue to have, a significant impact on a segment of our membership. Your March 20 interpretation represents a willingness on the part of the Department to address the dilemma posed by Part 375 for business aviation. We applaud that decision and would like to build on it in accordance with the proposal discussed at Wednesday's meeting.

NBAA's proposal would permit operations with *U.S. registered* aircraft conducted under Subpart F to Part 91 (Section 91.501 et seq.) – which are deemed non-commercial by FAA and "exempt" from FAA certification – to be deemed "non-commercial" by the Department for Part 375 purposes. As a result, the reimbursement of expenses permitted by Section 91.501(b) would not constitute "remuneration or hire" within the meaning of Part 375.

Your March 20, 2003 interpretation permits cost reimbursable or "chargeback" operations conducted by a parent for its wholly-owned subsidiary to be treated as non-commercial – *i.e.*, such operations may be performed under Section 375.30 without the need for additional economic authority from the Department. These operations are also permitted by FAA under Section 91.501(b)(5). In this regard, the Department is building on its 1986 interpretation which permitted demonstration flights performed on a chargeback basis to be considered "non-commercial" – the same way that FAA treats these flights under Section 91.501(b)(3).

NBAA views its proposal (summarized above) as the logical "next step" to extend the Department's earlier interpretations beyond demonstration flights and parent/wholly-owned subsidiary operations to include other related business aviation activities – namely time sharing, interchange and joint ownership operations, and the *full scope* of intra-corporate family operations – which, for over 30 years, the FAA has permitted to operate under FAR Part 91 as "non-commercial."

The Honorable Read Van de Water
May 16, 2003
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During Wednesday's meeting, we were asked to describe in more detail the FAA's Subpart F options which are incorporated into our proposal. In reviewing this description, please bear in mind that all of these options are "fenced in" to ensure their non-commercial status. By way of illustration, only companies whose aircraft operations are "incidental" to the primary business of these companies are eligible to engage in intra-corporate family, time sharing, interchange, and joint ownership operations under Section 91.501(b).[1] Eligibility is also limited to operations of N-registered aircraft[2] which are not engaged in "common carriage." The latter restriction ensures that a company does not lose sight of the main purpose of business aviation, namely to support the company's overall business, as opposed to the company's aircraft activity becoming a business in and of itself.

With the above in mind, we are providing the following overview of the Subpart F non-commercial options upon which we are relying:

1. Intra-Corporate Family Operations (Section 91.501(b)(5)

This is perhaps the most widely utilized Subpart F option which permits the company that is furnishing and operating the airplane to carry its own officials and guests as well as carry the officials and guests of its subsidiary(ies), its parent company, and the subsidiary(ies) of its parent on a fully-allocated cost reimbursable basis. Again we would emphasize that the company's aviation activities must be secondary to the overall business of the company to avail itself of this option.

As we discussed Wednesday, "company" would, in our view, include a corporation, LLC, and similar legal structures. What constitutes a "subsidiary" would be interpreted in accordance with the law of the state of incorporation. The consensus yesterday was that 51% ownership in general would be sufficient to establish a parent – "subsidiary" – relationship.

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[1] Accordingly, if Company XYZ is engaged in the manufacture of widgets and uses the company jet to carry its officers and guests, XYZ's aircraft operations satisfy this incidental business test, and XYZ is eligible to perform the types of cost-reimbursable operations permitted by Subpart F without these operations being considered "commercial" and without the need for FAA Part 121 or Part 135 certification.

[2] The regulation itself is limited to large and multi-engine turbojet-powered airplanes (regardless of weight). However, by long-standing exemption, FAA has permitted NBAA members operating small airplanes and helicopters to avail themselves of the Subpart F non-commercial options. Individual companies would also be eligible to obtain their own exemptions and several have done so.

While your March 20, 2003 interpretation would be inclusive of the type of operations permitted by FAA as non-commercial under Section 91.501(b)(5), we believe that the limitation to a "wholly-owned subsidiary" is unnecessarily restrictive to ensure the non-commercial status of these aviation activities and does not take into account that corporate structures today involve "subsidiaries" which are less than 100% owned by the parent.

Interchange Arrangement (Section 91.501(b)(6) and (c)(2)

This is another way to spread the costs of operating a company airplane through what is essentially a barter arrangement where Company A swaps time on its airplane for *equal time* on Company B's airplane. Under an interchange arrangement, the company operating the more expensive airplane can be reimbursed for the difference between the fully-allocated costs attributable to the airplanes being swapped on an equal time basis.

Interchanging is a useful business aviation tool to permit each party to the interchange agreement to maximize the utilization of its own aircraft and gain access to the other party's aircraft when needed. As examples: Company A's aircraft may be "in maintenance;" Company A may require additional "lift" during peak periods to accommodate its business travel needs; or Company B's airplane may be more suitable in terms of capacity, range, and cost for a particular flight proposed by Company A. If Company A has an interchange agreement with Company B, and Company B's aircraft is available, Company B can provide its airplane to Company A and recover the fully-allocated cost of such operations through the "barter" and "boot" features of the interchange concept.

2. Joint Ownership (Section 91.501(b)(6) and (c)(3))

Yet another way for a company to spread costs while retaining its non-commercial status in the FAA eyes is through joint ownership. This is a form of co-ownership involving an *operating joint owner* (the owner furnishing the crew) and one (or more) *non-operating joint owners* (the owners being transported) each of which must appear as a "registered owner" on the FAA certificate of registration. Under this arrangement the operating joint owner can carry the officials and guests of the non-operating joint owner on a fully-allocated cost recovery basis.

Joint ownership has also benefited business aviation by enabling companies which, individually, cannot afford to own and operate an airplane, to join forces and share the substantial capital costs of acquiring the airplane. One of the joint owners would then be

The Honorable Read Van de Water
May 16, 2003
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designated as the flight department manager to operate the airplane for each of the joint owners, again on a cost-sharing basis.

3. Time Sharing (Section 91.501(b)(6), (c)(1) and (d))

This is an arrangement whereby a company can use its airplane to carry other persons on *a limited* cost reimbursable basis. The charges that may be recovered are essentially limited to the out-of-pocket expenses associated with the particular flight plus an additional charge equal to 100% of the fuel.[3] Even with this add-on the company will generally *not* recover the fully-allocated cost of a particular flight.

In the context of business aviation, companies utilize time sharing arrangements to carry executive officers traveling on personal business where the company requires payment, or the officers insist on paying, for the transportation to the extent permitted by FAA rules. Again, as noted above, the FAA permits these operations only when *"common carriage is not involved"* so as a legal matter – as well as for practical business considerations – companies only allow a few executives to utilize the company airplane on a time sharing basis.

Thanks again for the opportunity to address the Part 375 of concern to our membership. If you have any questions regarding the NBAA proposal or the FAA Subpart F options incorporated therein, please feel free to contact me at (202) 783-9262 or NBAA's regulatory counsel Gary B. Garofalo at (202) 776-3970 and Frank Costello (202) 298-8660.

Sincerely,

Pete West
Senior Vice President
Government & Public Affairs

[3] This is also the measure of cost recovery for demonstration flights under Section 91.501(b)(3) which DOT, by virtue of its 1986 interpretation, views as non-commercial for purposes of Part 375.

[FR Doc. 03–16973 Filed 7–3–03; 8:45 am]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for North-South Rail Link in Boston, MA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of EIS cancellation.

SUMMARY: Notice is hereby given that the Federal Transit Administration (FTA) is canceling its preparation of an Environmental Impact Statement (EIS) for a rail-in-tunnel connection between North and South Stations in downtown

Boston, Massachusetts. The project sponsor, the Massachusetts Bay Transportation Authority (MBTA), has announced its intention not to pursue the project at this time for lack of financial resources.

FOR FURTHER INFORMATION CONTACT: Richard H. Doyle, Regional Administrator, FTA Region 1, (617) 494–2055.

SUPPLEMENTARY INFORMATION: On March 8, 1995, FTA published a Notice of Intent (NOI) to prepare an EIS for a North-South Rail Link (60 FR 12819): a rail-in-tunnel connection between the MBTA's North and South Stations in downtown Boston, intended to connect the MBTA's separate commuter rail systems on the north and south sides of Boston and to close the gap in intercity rail service between Boston and Portland, Maine. On April 14, 2003, however, the MBTA informed FTA of its intention to forego this project in the near future in light of the MBTA's limited financial resources and its pursuit of certain other projects of higher priority. In response, on May 30, 2003, FTA recommended that the results of the MBTA's alternatives analyses to date be compiled as a Major Investment Study (MIS): a document that could provide an appropriate planning context for further consideration of alternatives for a North-South Rail link. In accordance with FTA's metropolitan planning requirements at 23 CFR part 450, an MIS may precede the preparation of an EIS and be a useful tool for developing local consensus, financing, and an implementation strategy for a fixed guideway transit project. Thus, on June 24, 2003, the MBTA published an MIS for the North-South Rail Link, which had been prepared with financial assistance from FTA. Should the MBTA choose in the future to again pursue a North-South Rail Link, this June 2003 MIS could serve as a foundation of analysis for a subsequent EIS. Given the MBTA's current intentions, however, there is no longer a proposal for Federal action on the North-South Rail Link subject to the requirements of the National Environmental Policy Act, therefore, FTA is rescinding its March 8, 1995 NOI and terminating its preparation of an EIS for the North South Rail Link.

Issued on: June 27, 2003.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 03–16977 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** document with a 60-day comment period was published on October 30, 2002 (67 FR 66192).

DATES: Comments must be received on or before August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Carlita Ballard at the National Highway Traffic Safety Administration, Office of Planning and Consumer Standards, (NVS–131), 202–366–0307, 400 Seventh Street, SW., Room 5320, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 544; Insurer Reporting Requirement.

OMB Control Number: 2127–0547.

Type of Request: Request for public comment on a previously approved collection of information.

Abstract: NHTSA must ensure that passenger motor vehicle insurance companies and rental/leasing companies comply with 49 CFR Part 544, Insurer Reporting Requirement. Part 544 requires that the insurance/rental and leasing companies provide information on comprehensive insurance premiums, theft and recoveries and actions taken to address motor vehicle theft.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 66,300 hours (56,700 man-hours for 28 insurance companies and 9,600 man-hours for 17 rental and leasing companies).

Addresses: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on: June 27, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–16975 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 28, 2002 (67 FR 65832).

DATES: Comments must be submitted on or before August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph P. Scott at the National Highway Traffic Safety Administration (NHTSA), Office of Crash Avoidance Standards, 202–366–8525. 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 574, Tire Identification and Recordkeeping.

OMB Control Number: 2127–0050.

Type of Request: Request for public comment on a previously approved collection of information.

Abstract: Each tire manufacturer is required to collect and maintain records of the names and addresses of the first purchasers of new tires. To carry out this mandate, 49 CFR part 574 requires tire dealers and distributors to record the names and addresses of retail purchasers of new tires and the identification number(s) of the tires sold. A specific form is provided to tire dealers and distributors by tire manufacturers for recording this information.

The completed forms are returned to the tire manufacturers where they are to remain for three years after the date received by the manufacturer. Additionally, motor vehicle manufacturers were required to record the names and addresses of the first purchasers of new motor vehicles, together with the identification numbers of the tires on the new vehicles.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 245,000 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited on

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information or reduce the costs for collecting the required information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: June 27, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–16976 Filed 7–3–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Actions on Exemption Applications

AGENCY: Research and Special Programs Administration, DOT

ACTION: Notice of actions on exemption applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on exemption applications in January–March 2003. The modes of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carring aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions. It should be noted that some of the sections cited were those in effect at the time certain exemptions were issued.

Issued in Washington, DC, on June 26, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
MODIFICATION EXEMPTIONS				
8760–M	DOT–E 8760	Barton Solvents, Inc., Des Moines, IA.	49 CFR 172.328, 172.334(b).	To modify the exemption to authorize the transportation of additional Class 3 materials in compartmented cargo tank motor vehicles.
9778–M	DOT–E 9778	Baker Atlas, Houston, TX	49 CFR 173.304, 173.306	To modify the exemption to authorize the transportation of an additional Class 7 material in non-DOT specification packaging.
9909–M	DOT–E 9909	Taylor-Wharton, Harrisburg, PA.	49 CFR 173.301(h), 173.302, 173.304, 173.34(a)(1), 175.3, 178.37.	To modify the exemption to authorize the elimination of the Fracture Toughness Test requirement on non-DOT specification steel cylinders transporting Division 2.1, 2.2 and 2.3 materials.
10143–M	DOT–E 10143	Eurocom, Inc., Irving, TX	49 CFR 173.306(a), 178.33a.	To modify the exemption to authorize the transportation of additional Division 2.2 materials in a non-refillable, non-DOT specification inside metal container.
10232–M	DOT–E 10232	Sexton Can Company, Inc., Cambridge, MA.	49 CFR 173.304	To modify the exemption to authorize a capacity increase to 40 cubic inches of the non-refillable, non-DOT specification container for the transportation of Division 2.2 materials.
10880–M	DOT–E 10880	American West Explosives, Inc., Springfield, MO.	49 CFR 172.101 column (8c), 173.114, 173.35(b).	To modify the exemption to authorize the transportation of Division 1.1D, 1.4D, 1.4B, 1.4S and additional 1.5D materials in reusable, flexible intermediate bulk containers.
11099–M	DOT–E 11099	AMKO A Service Company, Gnadenhutten, OH.	49 CFR 173.302(c), 173.34(e).	To modify the exemption to authorize retesting of DOT Specification 3A and 3AA cylinders by acoustic emission (AE) and ultrasonic examination (UE) method for the transportation of Division 2.1 and 2.2 materials.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11194–M	DOT–E 11194	Carleton Technologies, Inc., Glen Burnie, MD.	49 CFR 173.302(a), 173.304(a), 175.3.	To modify the exemption to authorize the transportation of additional Division 2.2 materials in a non-DOT specification fully wrapped, carbon-fiber reinforced aluminum-lined cylinder.
11489–M	DOT–E 11489	TRW Automotive, Queen Creek, AZ.	49 CFR 172.320, 173.56(b).	To modify the exemption to authorize the use of a contract carrier for transporting certain unapproved or unidentified items as approved, air bag inflators or air bag modules or seat belt pretensioners or seat belt modules as Division 1.4C explosive articles, segregated from other hazardous materials.
11494–M	DOT–E 11494	Atlantic Research Corp. (Automotive Products Group), Knoxville, TN.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the exemption to authorize the elimination of the flattening test requirement on non-DOT specification cylinders transporting Division 2.2 materials.
11650–M	DOT–E 11650	Autoliv ASP, Inc., Ogden, UT.	49 CFR 178.65–9	To modify the exemption to authorize a newly designed airbag inflator device with a maximum service pressure of 8500 PSIG for use as a component of a automobile vehicle safety system.
11691–M	DOT–E 11691	Cott Concentrates, Columbus, GA.	49 CFR 176.331, 176.800(a), 176.83(d).	To modify the exemption to authorize the transportation of an additional Class 8 material via cargo vessel.
11850–M	DOT–E 11850	Air Transport Association, Washington, DC.	49 CFR 173.34(e)	To modify the exemption to authorize the use of certain DOT and non-DOT specification cylinders fabricated from 4130 steel and titanium for the transportation of Division 2.2 materials.
11970–M	DOT–E 11970	ExxonMobil Chemical Company, Houston, TX.	49 CFR 172.101, 178.245–1(c).	To modify the exemption to authorize the transportation of a hazardous material using an alternative shipping description for Division 4.2 materials with a Division 4.3 subsidiary hazard in non-DOT specification steel portable tanks.
11993–M	DOT–E 11993	BREED Technologies, Inc., Lakeland, FL.	49 CFR 173.301(h), 173.302, 173.306(d)(3).	To modify the exemption to authorize the transportation of Division 1.4G and Class 9 materials in non-DOT specification cylinders for use as components of automobile safety restraint systems.
12056–M	DOT–E 12056	Department of Defense (MTMC), Fort Eustis, VA.	49 CFR 173.226, 173.336	To modify the exemption to authorize two additional destination facilities and authorize an increased number of round trip shipments containing Division 2.3 and 6.1 materials.
12104–M	DOT–E 12104	Mitsubishi Polyester Film, Greer, SC.	49 CFR 174.67(i)	To modify the exemption to upgrade loading procedures and drawings for the DOT Specification tank cars transporting Class 9 materials.
12782–M	DOT–E 12782	Air Liquide America L.P., Houston, TX.	49 CFR 173.301(g)(1)	To modify the exemption to authorize the transportation of certain Division 2.2 and 2.3 materials in DOT Specification cylinders equipped with plastic valve protection caps.
12866–M	DOT–E 12866	Delta Air Lines (Technical Operations Center), Atlanta, GA.	49 CFR 172.301(c), 173.219(b)(1), 173.302(a), 175.3.	To reissue the exemption originally issued on an emergency basis and to remove certain special provisions/requirements for the non-DOT specification cylinders containing Division 2.2 materials that have inadvertently been mis-marked.
12886–M	DOT–E 12886	The Society of the Plastics Industry, Inc., Washington, DC.	49 CFR 172.301(c), 172.402.	To reissue the exemption originally issued on an emergency basis for the transportation of a Division 5.2 material without subsidiary hazard labels.
12927–M	DOT–E 12927	Tri-Wall, A Weyerhaeuser Business, Butler, IN.	49 CFR 173.12(b)(2)(i)	To modify the exemption to authorize cargo vessel as an additional mode for the transportation of various waste hazardous materials.
12995–M	DOT–E 12995	The Dow Chemical Company, Midland, MI.	49 CFR 173.306(a)(3)(v)	To modify the exemption to authorize the transportation of a Division 2.2 material in DOT 2Q Specification non-refillable containers.
13032–M	DOT–E 13032	CONAX Florida Corporation, St. Petersburg, FL.	49 CFR 178.65	To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification, non-refillable composite pressure vessels for the transportation of Division 2.2 materials.
13113–M	DOT–E 13113	Dow AgroSciences L.L.C., Indianapolis, IN.	49 CFR 172.302, 173.243 (b) and (c).	To reissue the exemption originally issued on an emergency basis for the transportation of Division 6.1 materials in DOT Specification cargo tank motor vehicles and portable tanks.
13163–M	DOT–E 13163	Pacific Bio-Material Management, Inc., Fresno, CA.	49 CFR 173.196(b), 173.196(e)(2)(ii).	To reissue the exemption originally issued on an emergency basis for the transportation of certain Division 6.2 materials in specially designed packaging.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
			NEW EXEMPTIONS	
12718–N	DOT–E 12718	Weldship Corporation, Bethlehem, PA.	49 CFR 172.301, 173.34(e), 173.34(e)(3), 173.34(e)(4), 173.34(e)(5), 173.34(e)(6), 173.34(e)(7), 173.34(e)(8).	To authorize the transportation in commerce of certain DOT–3AL seamless aluminum cylinders constructed of alloy 6061 that have been alternatively ultransonically retested for use in transporting Division 2.1, 2.2, 2.3, materials. (modes 1, 2, 3, 4,)
12879–N	DOT–E 12879	Millennium Speciality Chemicals, Jacksonville, FL.	49 CFR 172.514	To authorize the transportation in commerce of portable tanks and IBCs containing combustible liquids without required placards when placed in closed sealed freight containers that are properly placarded. (modes 1, 3)
12990–N	DOT–E 12990	Technifab Products, Inc., Brazil, IN.	49 CFR 178.57(1)	To authorize the manufacture, mark, sale and use of cryogenic tanks equipped with alternative openings and testing criteria for use in transporting hazardous materials. (mode 1)
12998–N	DOT–E 12998	Safety-Kleen Services, Inc., Columbia, SC.	49 CFR 173.12(b)(1)	To authorize the transportation in commerce of non-waste material from one location to another location for various customers in lab packs. (mode 1)
13046–N	DOT–E 13046	Consani Engineering, Elsies River, South Africa.	49 CFR 178.245–1(a)	To authorize the manufacture, marking, sale and use of certain DOT Specification 51 steel portable tanks permanently fixed within ISO frames designed in accordance with Section VIII, Division II of the ASME code instead of Section VIII, Division 1 for use in transporting Division 2.1, 2.2 an 2.3 hazardous materials. (modes 1, 2, 3)
13084–N	DOT–E 13084	Schering-Plough Veterinary Operations, Inc., Baton Rouge, LA.	49 CFR 173.150(f)	To authorize the transportation in commerce of flammable liquids, n.o.s. in 75-gallon stainless steel tanks between two facilities with minimal regulation. (mode 1)
13088–N	DOT–E 13088	Electron Transfer Technologies, Inc., Edison, NJ.	49 CFR 173.192, 173.40, 178.604.	To authorize the transportation in commerce of Division 2.3, 6.1 & Class 8 hazardous material in specially designed stainless steel containers overpacked in reusable 30-gallon steel containers. (modes 1, 3, 4)
13110–N	DOT–E 13110	Praxair, Inc., Danbury, CT	49 CFR 173.242	To authorize the transportation in commerce of a non-DOT specification bulk packaging for use in transporting metal catalyst, dry, Division 4.2. (modes 1, 3)
13112–N	DOT–E 13112	Conax Florida Corporation, St. Petersburg, FL.	49 CFR 173.302, 175.3 ...	To authorize the manufacture, mark, sale and use of non-DOT specification non-reusable cylinders conforming with all regulations similar to DOT specification 39 cylinder for use in transporting Division 2.2 material. (modes 1, 2, 3, 4, 5)
13116–N	DOT–E 13116	Chromatography Research Supplies, Inc., Louisville, KY.	49 CFR 173.151(b)	To authorize the transportation in commerce of gas filters containing limited quantities of hazardous materials classed as self-heating solid, inorganic, n.o.s. to be transported under the limited quantity provisions as Division 4.1 without required labelling or placarding. (modes 1, 4, 5)
13117–N	DOT–E 13117	TEN–E Packaging Services, Newport, MN.	49 CFR 173.21(i)	To authorize an alternative examiner other than the Bureau of Explosives for cigarette lighter and inner packaging approval requests. (mode 1)
13164–N	DOT–E 13164	United States Enrichment Corporation (USEC), Bethesda, MD.	49 CFR 173.420	To authorize the one-time transportation in commerce of 480M type cylinders for use in transporting Class 7 hazardous materials. (modes 1, 2)
13165–N	DOT–E 13165	Harris Corporation, Melbourne, FL.	49 CFR 172.200	To authorize the transportation in commerce of non-bulk hazardous materials within the same facility along public roads with alternative shipping papers. (mode 1)
13172–N	DOT–E 13172	Raytheon Co., Tewksbury, MA.	49 CFR 173.302(a), 175.3	To authorize the transportation in commerce of helium, Division 2.2, in fully wrapped carbon-fiber reinforced aluminum lined non-DOT cylinders with a maximum service pressure of 3240 psi and a water capacity of 260 liters. (modes 1, 2, 3, 4, 5)
13180–N	DOT–E 13180	The Association of HazMat Shippers, Washington, DC.	49 CFR 123, 172.203(a), 172.301(c), 173.22, 173.306, 173.306(a)(1).	To authorize the transportation in commerce of aerosols with a capacity of 50 ml or less containing Division 2.2 gas and no other hazardous materials be transported without certain hazard communication requirements. (modes 1, 2, 3)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
0113215–N ..	DOT–E 13215	Cryogenic Manufacturing and Repair, Inc., Eagle Lake, TX.	49 CFR 174.85	To authorize the manufacture, mark, sale and use of non-DOT specification insulated portable tanks for use in transporting Division 2.2 hazardous materials. (mode 2)
		EMERGENCY EXEMPTIONS		
EE 10996–M	DOT–E 10996	AeroTech, Inc., Las Vegas, NV.	49 CFR 173 Subpart C	Emergency modification request to add cargo aircraft as a mode of transportation. (modes 1, 2)
EE 11536–M	DOT–E 11536	The Boeing Company, Los Angeles, CA.	49 CFR 173.159, 173.302, 173.304, 173.62.	Request for emergency modification to the exemption to authorize two containers with different dimensions and add Hydrogen, compressed for spacecraft batteries. (mode 4)
EE 12961–N	DOT–E 12961	Kuehne Chemical Co., South Kearny, NJ.	49 CFR 172.302(c), 173.24(b), 179.300–12(b), 179.300–13, 173.24.	Request for an emergency exemption to transport a leaking ton cylinder that has been fitted with a B kit to prevent leaking during transportation. (mode 1)
EE 13042–M	DOT–E 13042	U.S. Department of State, Sterling, VA.	49 CFR 172.101 Table Column 8C.	Emergency request to modify the exemption to authorize larger size solid materials that are contaminated with or suspected of being contaminated with anthrax bacteria or spores. (mode 1)
EE 13127–M	DOT–E 13127	American Pacific Corporation, Cedar City, UT.	49 CFR 172.102(c) SP IB6.	Emergency request for modification to authorize the transportation in commerce of potassium perchlorate in UN Specification flexible IBCs. (mode 1)
EE 13141–N	DOT–E 13141	Airgas Specialty Gases, Cheshire, CT.	49 CFR 172.301(c), 173.301(f).	Emergency request to transport a DOT specification 4BW240 cylinder containing sulfur dioxide which developed a leak and has a Chlorine Institute A kit applied. (mode 1)
EE 13156–M	DOT–E 13156	Phelps Sungas, Geneva, NY.	49 CFR 178.337–14	Emergency request for modification to authorize continued use of MC 331 cargo tank motor vehicles with specification plates that are missing certain required markings. (mode 1)
EE 13185–M	DOT–E 13185	TRW, Washington, MI	49 CFR 172.101	Extension of the effective date signed today and given to Michelle Ford for scanning. (mode 1)
EE 13187–M	DOT–E 13187	Radiation Management Services, Cardinal Health, Cleveland, OH.	49 CFR 173.302	Emergency request to modify the exemption to authorize the transportation in commerce of a mixture of Division 2.2 gases in non-specification packaging. (modes 1, 2, 3)
EE 13193–N	DOT–E 13193	Delta Airlines	49 CFR 172.101 HMT Column 9A.	Emergency request to authorize the transportation of more than 3200 pounds of Division 1.4S ammunition on passenger carrying aircraft. (mode 5)
EE 13195–N	DOT–E 13195	Micro Parts Inc., Easgan, MN.	49 CFR 173.240	Emergency request for the transportation in commerce of a DOT Specification IBC containing hazard waste solid. The IBC has a small crack and is transported on a base support pallet and enclosed in a double bag of 4 mil plyethylene plastic. (mode 1)
EE 13196–N	DOT–E 13196	McLane Company Inc., Temple, TX.	49 CFR 172.102 special provision N10.	Emergency request to authorize the transportation in commerce of lighters in a plastic tote that meets packing group II performance level but is not marked. (mode 1)
EE 13197–N	DOT–E 13197	Chevron Texaco	49 CFR 173.212	Emergency request to authorize the transportation in commerce of hydrogen in metal hydride in alternative packaging. (mode 1)
EE 13198–N	DOT–E 13198	MI L.L.C., Anchorage, AK	49 CFR 172.101 HMT Column 9B, 173.203.	Emergency request to authorize the transportation in commerce of a Class 8 material in alternative packaging and exceeding the quantity limits by cargo aircraft only where no other means of transportation is available. (modes 1, 4)
EE 13204–N	DOT–E 13204	Esoterix, Inc., Austin, TX	49 CFR 173.197	Emergency request to authorize the transportation in commerce of regulated medical waste in alternative packaging. (modes 1, 4, 5)
EE 13205–N	DOT–E 13205	Western Propane Gas Association, Sacramento, CA.	49 CFR 173.315(j)(4)	Emergency request to authorize the transportation in commerce of non-specification portable tanks that are built to ASME standards that are 40–70% full of propane. (mode 1)
EE 13207–N	DOT–E 13207	BEI Hawaii, Honolulu, HI	49 CFR 173.32(f)(5)	Emergency request to authorize the transportation in commerce of certain hazardous materials in portable tanks that are loaded between 70 and 76 percent filling density by volume. (mode 1)

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 13214–N	DOT–E 13214	Union Pacific Railroad Company, Omaha, NE.	49 CFR 172.203(a), 173.242(c)(1).	Emergency request to authorize the transportation in commerce of certain Division 1.1, 1.2 and 1.3 explosives by rail without conforming to the positioning requirements of 49 CFR 174.85 for purposes of national security. (mode 1)
EE 13216–N	DOT–E 13216	Autoliv/General Motors, Corporation, Ogden, UT.	49 CFR 172.704(a)(1)	Application for an emergency exemption to authorize the shipments of airbags and seatbelt pretensioners being recalled. The applicant requests relief from section 172.704 which addresses the general awareness / familiarization training. (modes 1, 3)
EE 13217–N	DOT–E 13217	Belshire Environmental Services, Inc., Lake Forest, CA.	49 CFR 173.202	Emergency request to authorize the transportation in commerce of gasoline in equipment (gasoline dispensers) by highway. (mode 1)

DENIALS

12701–N	Request by Fuel Cell Components & Integrators, Inc. Hauppauge, NY to authorize the transporation in commerce of non-DOT specification cylinders comparable to Specification 4E for use in transporting compressed gas denied March 27, 2003.
13111–N	Request by Fisher Scientific Chemical Division Fair Lawn, NJ to authorize the transportation in commerce of 70% nitric acid, Class 8, in certain single and combination packagings which is currently forbidden denied March 18, 2003.
13162–N	Request by Exact Sciences Corporation Maynard, MA to authroize the transportation in commerce of diagnostic specimens, Division 6.2, in quantities greater than presently authroized, to be transported as unregulated denied February 13, 2003.

[FR Doc. 03–16978 Filed 7–3–03; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 30186 (Sub-No. 3)]

Tongue River Railroad Co.—Construction and Operation—Western Alignment

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of adoption of procedural schedule.

SUMMARY: The Board is giving notice of the procedural schedule it adopted in a decision served July 7, 2003. The schedule is a result of the supplemental evidence the Tongue River Railroad Company (TRRC) filed to update the transportation aspects of its Western Alignment construction application in this sub-numbered proceeding (*Tongue River III*).

DATES: The Board's decision is effective on July 7, 2003. Pleadings and notices of intent to participate must be filed in accordance with the schedule set forth in the Appendix to this notice.

ADDRESSES: Send an original and 10 copies of the notice of intent to participate in STB Finance Docket No. 30186 (Sub-No. 3) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. All subsequent filings must be concurrently served on the Board and all parties of record as listed in the forthcoming updated service list.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under the Board's procedural schedule, each party of record (POR) will be allowed 40 days from the issuance date of the updated service list, discussed below, to file evidence or comments responsive to TRRC's supplemental evidence. A 40-day comment period provides ample time to analyze and comment on the updated evidence, which consists of two updated pro forma charts, four verified statements, and two letters supporting the proposal. This length of time balances the PORs' need to examine the updated evidence with the need to move forward on this matter. After the 40-day comment period has ended, TRRC will have 20 days to reply to the comments and responsive evidence.

In addition, prior to the beginning of the 40-day comment period, an opportunity will be given for new participants to become PORs. It has been almost 5 years since notice of this alternative construction proposal was originally published, and there may now be additional members of the public with an interest in this matter. Anyone interested in becoming a POR and being added to the service list must file a notice of intent to participate with the Board within 10 days of the service date of this decision (by July 17, 2003).[1] Send an original and 10 copies of the notice of intent to the address listed above. The new PORs must comply with the 40-day comment period, discussed above, for filing comments or evidence responsive to TRRC's updated evidence with the Board and serving copies on all other PORs.

After expiration of the 10-day period for filing notices of intent to participate, the Board will issue an updated service list, which will include persons who have given notice of their intent to participate pursuant to this decision, as well as those currently on the list. Within 5 days of the issuance of the updated service list, current PORs must serve the new PORs with copies of all filings submitted by that party since May 1, 2003. The current PORs will also be required to file with the Board, within 10 days of the service date of the updated list, an original plus 10 copies of a certificate of service indicating that the service required by this decision has been accomplished. The 40-day period for comments, described above, will begin running on the date the updated service list is issued.

Copies of TRRC's supplemental evidence and its original *Tongue River*

[1] Current PORs may update their addresses during this 10-day period by sending any new information to the Board.

III application are available for public inspection at the office of either the Surface Transportation Board or the applicant, TRRC.[2]

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: June 27, 2003.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

Appendix—Procedural Schedule

July 17, 2003—Due date for notices of intent to participate as a POR.
L—Date of service of updated Service List.
L + 5—Due date for current PORs to serve previously submitted filings on new PORs.
L + 10—Due date for certificates of service from current PORs.
L + 40—Due date for comments or evidence responsive to the supplemental evidence.
L + 60—Due date for replies to comments and responsive evidence.

[FR Doc. 03–17011 Filed 7–3–03; 8:45 am]

BILLING CODE 4915–00–P

[2] TRRC has filed a petition for substitution of parties, in which it requests that Tongue River Railroad Company, Inc. be substituted for Tongue River Railroad Company as the applicant in this proceeding. This petition has been contested and will be addressed in a subsequent decision by the Board. Until then, all pleadings should continue to refer to applicant as Tongue River Railroad Company. The address of the office where the copies mentioned above may be obtained has not changed.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 636X)]

CSX Transportation, Inc.—Abandonment Exemption—in St. Clair County, MI

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 2.68-mile line of railroad between milepost CBD 83.28 at Tappan, and milepost CBD 85.96 near Port Huron, in St. Clair County, MI. The line traverses United States Postal Service Zip Codes 48060 and 48061.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 6, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 17, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 28, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 11, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by July 7, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 30, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–17039 Filed 7–3–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 6, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Electronic Sales Kit: Interview Guide.

Description: A guide by IRS Wage & Investment Division (W&I)—Stakeholder Partnerships, Education, and Communication (SPEC) and Small Business/Self-Employed Division (SB/SE)—Taxpayer Education and Communication (TEC) Field employees containing suggested questions to ask during in-person visitations and/or telemarketing calls with tax professionals to better direct a conversation leading to encouraging the tax professional to e-file.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545–1442.

Regulation Project Number: PS–79–93 Final.

Type of Review: Extension.

Title: Grantor Trust Reporting Requirements.

Description: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust treated as owned by the grantor or another person are properly reported.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 1,840,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 920,000 hours.

OMB Number: 1545–1832.

Form Number: IRS Form 14411.

Type of Review: Extension.

Title: Systemic Advocacy Issue Submission Form.

Description: Form 14411 is to be used by individuals, businesses, practitioners and other public groups to identify systemic problems that taxpayers are encountering with IRS. This form will be submitted electronically via the IRS.gov website. We will accept mailed or faxed forms if necessary.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 420.

Estimated Burden Hours Per Respondent: 48 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 336 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–16991 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 26, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 6, 2003 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0712.

Form Number: IRS Form 6198.

Type of Review: Extension.

Title: Risk Limitations.

Description: Internal Revenue Code (IRC) section 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms.

Estimated Number of Respondents/Recordkeepers: 185,167.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 12 min.

Learning about the law or the form—1 hr., 0 min.

Preparing the form—1 hr., 25 min.

Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 735,113 hours.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–16992 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Proposed Collection of Information: Assignment Form

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''Assignment Form.''

DATES: Written comments should be received on or before September 5, 2003.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program, Room 135, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Rose Brewer, Manager, Judgment Fund Branch, 3700 East West Highway, Room 6D30, Hyattsville, MD 20782. 202–874–6664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Assignment Form.

OMB Number: 1510–0035.

Form Number: None.

Abstract: This form is used when an awardholder wants to assign or transfer all or part of his/her award to another

person. When this occurs, the awardholder forfeits all future rights to the portion assigned.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 150.

Estimated Time Per Respondent: 30 minutes.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: June 30, 2003.

Judith R. Tillman,

Assistant Commissioner Financial Operations.

[FR Doc. 03–16990 Filed 7–3–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change and Change in State of Incorporation; Atlas Assurance Company of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 22 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002, at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at 202–874–6779.

SUPPLEMENTARY INFORMATION: Atlas Assurance Company of America has formally merged into and changed its name to Peerless Indemnity Insurance Company. The state of incorporation has also changed from the state of New York to the state of Illinois, effective December 31, 2002. The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44300, July 1, 2002.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2002 revision, on page 44324 to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http:/www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone 202–512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 25, 2003.

Wanda J. Rogers,

Financial Accounting and Services Division, Financial Management Services.

[FR Doc. 03–16989 Filed 7–3–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Interpretive Guidance Concerning an Account Entitled ''Central Bank of Iraq/Oil Proceeds Receipts Account'' at the Federal Reserve Bank of New York

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') has determined that an account opened on the books of the Federal Reserve Bank of New York for the purpose of receiving proceeds of Iraqi petroleum contracts is subject to the prohibitions of Executive Order 13303 of May 22, 2003. Accordingly, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process with respect to that account is prohibited and shall be deemed null and void.

DATES: Effective June 19, 2003.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2500.

SUPPLEMENTARY INFORMATION:

In Executive Order 13303 of May 22, 2003 (the ''Order''), the President invoked, inter alia, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and section 5 of the United Nations Participation Act (22 U.S.C. 287c) to protect the Development Fund for Iraq and certain other property in which Iraq has an interest. Section 1 of the Order provides as follows:

Unless licensed or otherwise authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited, and shall be deemed null and void, with respect to the following:

(a) the Development Fund for Iraq, and

(b) all Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.

OFAC's interpretive guidance concerning the scope of the Order follows:

The account entitled ''Central Bank of Iraq/Oil Proceeds Receipts Account,'' which has been opened on the books of the Federal Reserve Bank of New York for the Central Bank of Iraq for the purpose of receiving proceeds of Iraqi petroleum contracts, is property subject to the prohibitions of Section 1(b) of Executive Order 13303 of May 22, 2003. Accordingly, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process with respect to such account is prohibited and shall be deemed null and void.

Dated: June 20, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 23, 2003.

Juan C. Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 03–17059 Filed 7–1–03; 3:05 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 2210 and 2210–F

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 2210, Underpayment of Estimated Tax by Individuals, Estate, and Trusts, and Form 2210–F, Underpayment of Estimated Tax by Farmers and Fishermen.

DATES: Written comments should be received on or before September 5, 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: Underpayment of Estimated Tax by Individuals, Estate, and Trusts (Form 2210), and Underpayment of Estimated Tax by Farmers and Fishermen (Form 2210–F).

OMB Number: 1545–0140.

Form Number: 2210 AND 2210–F.

Abstract: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. Form 2210 is used by individuals, estates, and trusts and Form 2210–F is used by farmers and fisherman to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether taxpayers are subject to the penalty, and to verify the penalty amount.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 900,000

Estimated Time Per Respondent: 2 hr.,48 min.

Estimated Total Annual Burden Hours: 2,519,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–17092 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2220

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 2220, Underpayment of Estimated Tax by Corporations.

DATES: Written comments should be received on or before September 5, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage 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: Underpayment of Estimated Tax by Corporations.

OMB Number: 1545–0142.

Form Number: 2220.

Abstract: Form 2220 is used by corporations to determine whether they are subject to the penalty for underpayment of estimated tax and, if so, the amount of the penalty. The IRS uses the information on Form 2220 to determine if the corporation had an underpayment of tax to which the estimated tax penalty applies and, if so, whether the amount of the penalty was computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 702,000.

Estimated Time Per Respondent: 29 hr., 17 min.

Estimated Total Annual Burden Hours: 20,557,433.

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 30, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–17093 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Letter 109C

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 Letter 109C, Return Requesting Refund Unlocatable or Not Filed; Send Copy.

DATES: Written comments should be received on or before September 5, 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 information collection 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: Return Requesting Refund Unlocatable or Not Filed; Send Copy.

OMB Number: 1545–0393.

Form Number: Letter 109C.

Abstract: If a taxpayer inquires about not receiving a refund and no return is found, this letter is sent requesting the taxpayer to file another return. The taxpayer must complete an affidavit stating that if they receive a second refund check, it will be return to the IRS.

Current Actions: There are no changes being made to the letter at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, business or other for profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 18,223.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,513.

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 30, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–17094 Filed 7–3–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 129

Monday, July 7, 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 COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Ihsan Elashyi, also known as Ihsan Elashi and Sammy Elashyi, Tetrabal Corporation, Inc., Maysoon Al Kayali, Mynet.Net Corp, and Al Kayali Corporation

Correction

In notice document 03–16250 beginning on page 38290 in the issue of Friday, June 27, 2003, make the following correction:

On page 38290, in the first column, the subject heading is corrected to read as set forth as above.

[FR Doc. C3–16250 Filed 7–3–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 7, 2003

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 141, 260, 357 and 375

Quarterly Financial Reporting and Revisions to the Annual Reports; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141, 260, 357 and 375

[Docket No. RM03–8–000]

Quarterly Financial Reporting and Revisions to the Annual Reports

June 26, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to revise its regulations by establishing quarterly financial reporting requirements for jurisdictional public utilities, licensees, natural gas and oil pipeline companies. Additionally, the Commission proposes to make certain changes to the existing FERC Annual Reports to improve the quality of financial information filed with the Commission and to provide consistency in the reporting of financial information for all periods.

The Commission proposes to add two quarterly financial report forms: FERC Form No. 3–Q, Quarterly Financial Report of Electric Companies, Licensees, and Natural Gas Companies, and FERC Form No. 6–Q, Quarterly Financial Report of Oil Pipeline Companies. These two new reports will collect financial and certain financial related information from jurisdictional entities on a more frequent basis.

The Commission also proposes to update FERC Annual Report Forms 1, 1–F, 2, 2–A, and 6. The updates include the reporting of fourth quarter financial data, adding a management discussion and analysis schedule, allowing the submission of the CPA certification electronically, updating the officer's certification, and accelerating the filing dates.

The Commission has determined that dependable, affordable, competitive wholesale energy markets require an adequate infrastructure, balanced market rules, and vigilant oversight. This rulemaking helps in achieving the goal of vigilant oversight by providing the Commission with more timely, relevant, reliable and understandable financial information from major participants in the energy market. This proposed rule provides the needed transparency of financial information from FERC-jurisdictional entities at a level of detail that is not obtainable from other sources. This proposed rule will allow the Commission, as well as customers, investors, and others to identify and evaluate financial trends and emerging issues facing the energy industry. More frequent financial reporting will aid the Commission in assessing the economic consequences of transactions and events on jurisdictional entities, measuring the effects of regulatory initiatives, evaluating the adequacy of existing traditional cost-based rates and aid in the development of needed changes to existing regulatory initiatives.

Finally, Congress recognized the importance of financial transparency and better financial disclosures resulting in the passage of the Sarbanes-Oxley Act of 2002 which requires public companies to disclose financial information on a rapid and current basis. The Commission therefore proposes to accelerate the filing dates of its FERC Annual Reports, and revise its officer's certification statement contained in these reports consistent with the Sarbanes-Oxley Act of 2002.

DATES: Comments are due August 6, 2003.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

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

Julie Kuhns, (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6287.

Christopher Bublitz, (Technical Information), Office of Administrative Litigation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8542.

Julia A. Lake, (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8370.

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I. Introduction

1. In this notice of proposed rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes to amend its financial reporting requirements for public utilities and licensees,[1] natural gas companies,[2] and oil pipeline companies.[3] The Commission proposes to require quarterly reporting of financial and certain financial related information from jurisdictional entities that are subject to the Commission's Uniform Systems of Accounts and file FERC Annual Report Forms 1, 1–F, 2, 2–A or 6.[4]

2. The persons and entities subject to the Federal Power, Natural Gas and Interstate Commerce Acts are engaged in the production of electricity, its transmission to ultimate customers, and the transportation and storage of natural

[1] Part 141 Statements and Reports (Schedules). 18 CFR part 141.

[2] Part 260 Statements and Reports (Schedules). 18 CFR part 260.

[3] Part 357 Annual Special or Periodic Reports: Carriers Subject to part 1 of the Interstate Commerce Act. 18 CFR part 357.

[4] FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others; FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees; FERC Form No. 2, Annual Report of Major Natural Gas Companies; FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies and Form No. 6, Annual Report of Oil Pipeline Companies.

gas and petroleum products. Congress granted the Commission authority under these Acts to prescribe periodic financial and non-financial reporting pursuant to sections 4, 304 and 309 of the Federal Power Act, sections 10(a) and 16 of the Natural Gas Act, and section 20 of the Interstate Commerce Act.[5] The Commission has implemented its long standing statutory authority to collect financial information by requiring electric, natural gas and oil pipeline companies to submit financial statements only on an annual basis, and until recently, in a paper format.

3. However, the information and market demands of the 21st century require that the Commission, as well as other users of financial data, receive timely, relevant and reliable information to make informed decisions about matters affecting the energy industry. Quarterly financial reporting will aid the Commission in assessing the economic consequences of transactions and events on jurisdictional entities, measuring the effects of regulatory initiatives, evaluating the adequacy of existing traditional cost-based rates and aid in the development of needed changes to existing regulatory initiatives. Financial statements are a primary source of this critical information.

4. Financial accounting information provides needed information concerning a company's past performance and its future prospects. The need for current and better disclosures drives the increasing demand for timely financial information. These needs have never been more evident. Enron and other widely reported financial accounting scandals have shaken public and investor confidence in the U.S. financial reporting system generally, and in our capital and energy markets. This crisis in confidence, unless reversed, will continue to compromise the energy industry's financial health and inhibit investments in critical energy infrastructure.

5. During the past year, the Commission has listened to Wall Street, representatives of investment and commercial banks, financial analysts, credit rating agencies, accounting standard setting bodies, and preparers of financial statements including the Chief Credit Risk Officers which represents companies that account for approximately half of the power and natural gas transactions in the United States. These groups delivered many messages, but all agreed that accounting transparency and better disclosure requirements are essential for the functioning of efficient markets and strengthening investor confidence. Rapid and current dissemination of financial information is essential to the efficient functioning of capital markets and strengthening investor confidence is crucial in a highly capital intensive energy industry that needs to attract funds in the market place to improve and expand the necessary infrastructure.

6. Congress recognized the importance of financial transparency and passed the Sarbanes-Oxley Act of 2002 which ordered public companies to disclose financial information on a rapid and current basis.[6] Additionally, this legislation requires executive officers to review and certify that the financial statements do not contain any untrue statement of material fact, are not misleading, and fairly represent the financial condition of the company. As a result of this legislation the United States Securities and Exchange Commission (SEC) has issued numerous regulations to implement this legislation including the acceleration of filing requirements for publicly held companies, and a new officer's certification statement attesting to the reliability of the information presented in the financial statements.

7. In order to improve transparency of the financial information related to FERC jurisdictional entities in a parallel fashion, the Commission is proposing to require financial reporting for FERC purposes on a quarterly basis. The proposed action taken today will allow the Commission, as well as other users, to identify and evaluate financial trends and emerging issues facing the energy industry. More frequent financial reporting will give the Commission and the public another tool to improve decision making. It will aid the Commission in assessing the economic consequences of transactions and events on jurisdictional entities, measuring the effects of regulatory initiatives, evaluating the adequacy of existing traditional cost-based rates and aid in the development of needed changes to existing regulatory initiatives.

8. We conclude that the benefits obtained from jurisdictional entities reporting financial information on a quarterly basis far outweigh any additional burden. The benefits to the Commission, as well as the public, of greater transparency and understandability of financial statements far outweigh the costs to an individual company. In fact, we find that the burden should be minimal. It is standard practice for companies to compile and summarize accounting transactions on a monthly basis, or even more frequently depending on the operational need for selected data. Thus, the information needed to compile quarterly financial statements is readily available.

9. Currently, the public can access financial information through the Commission's FERRIS system or by using Commission-developed software. To improve access to FERC-held financial information, we will make it easier for users to electronically access financial information filed with this Commission. It is also our intent to collaborate with the SEC to establish new Web links between our respective Web home pages so that all users can access FERC-held financial information in a timely and efficient manner.

10. The increased transparency of financial information will be accomplished by adding the following two new quarterly financial report forms: FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies (Form 3–Q), and FERC Form No. 6-Q, Quarterly Financial Report of Oil Pipeline Companies (Form 6–Q). The proposed quarterly reports will require companies to file with the Commission a complete set of quarterly financial statements including appropriate notes to the financial statements, a management's discussion and analysis of financial condition and results of operations (commonly referred to as an ''MD&A''), and ancillary service purchase and sales information.

11. The proposed quarterly reports will also require company officers to sign a certification statement attesting to the reliability of the filed information. Additionally, when a certified public accountant (CPA) has reviewed the quarterly report, this certification must also be filed with the Commission.

12. The Commission also proposes to update the financial reporting and disclosure requirements of the FERC Annual Reports to be consistent with the requirements contained in the quarterly reports. Jurisdictional entities will be required to include certain fourth quarter financial data in the FERC Annual Reports, including an MD&A schedule, and officers will be required to sign a certification statement attesting to the reliability of the filed information. Finally, the Commission is proposing to accelerate the filing dates for the FERC Annual Reports.

13. The Commission has determined that dependable, affordable, competitive wholesale energy markets require an

[5] *See* 16 U.S.C. 797, 825c and 825h; 15 U.S.C. 717i(a) and 717o; and 49 App. U.S.C. 1–85 (1988).

[6] Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745–810 (2002).

adequate infrastructure, balanced market rules, and vigilant oversight.[7] This rulemaking helps in achieving the goal of vigilant oversight by providing the Commission with more timely, relevant, reliable and understandable financial information from certain participants in the energy market.

14. Quarterly reporting of financial information will provide the Commission with an important tool to help identify emerging trends and issues affecting jurisdictional entities within the energy industry. It will aid the Commission is assessing the economic consequences of transactions and events on jurisdictional entities, measuring the effects of regulatory initiatives, evaluating the adequacy of existing traditional cost-based rates and aid in the development of needed changes to existing regulatory initiatives. In conclusion, full disclosure of all material facts to the Commission, as well as, other users of financial information is necessary if competitive markets are to function efficiently. Transparent reporting of information proposed in this rulemaking will help the Commission to achieve the above objectives.

II. Background

A. General

15. The primary objective of financial reporting is to provide financial statements to the Commission that accurately measure the results of operations and the financial condition of a company. Financial statements are the foundation for understanding the financial position of a business and are used to assess a company's past, present, and future performance. One of the principle means that jurisdictional entities use to communicate financial information to the Commission is through the filing of FERC Annual Report Forms 1, 1–F, 2, 2–A and 6. Additionally, jurisdictional entities file certain registration statements individually, or as part of a consolidated group, with the SEC and issue annual reports on a consolidated basis to shareholders. These registration statements and annual reports provide information about the financial condition of the parent company and its corporate family.

16. The FERC Annual Reports filed with the Commission report on the financial condition of a company at a jurisdictional entity level, and are compiled using a standard chart of accounts contained in the Commission's Uniform Systems of Accounts.[8] The use of a uniform chart of accounts permit public utilities and licensees,[9] natural gas companies,[10] and oil pipeline companies,[11] to account for similar transactions and events in a consistent manner, and communicate those results to the Commission on a periodic basis.

17. Additionally, it helps in presenting accurately the entity's financial condition and produces comprehensive data related to the entity's financial history helping to act as a guide for future action. The uniformity provided by the Commission's chart of accounts and related accounting instructions permits comparability and financial statement analysis of data provided by jurisdictional entities. Comparability of data and financial statement analysis for a particular entity from one period to the next, or between entities within the same industry, would be difficult to achieve if each company maintained its own accounting records using dissimilar accounting methods and classifications to record similar transactions and events.

18. The benefits of a standardized and uniform accounting system however, would not be realized if the financial information once compiled were withheld from public view. To ensure that these benefits are realized, and to provide transparency of economic consequences to all affected interests, the Commission has prescribed a program of periodic financial reporting that makes financial and non-financial information publicly available to all interested parties.

B. Basic Financial Statements

19. Under existing regulations, jurisdictional entities subject to the Uniform Systems of Accounts must annually file with the Commission a complete set of financial statements, along with other selected financial and non financial data through the submission of FERC Annual Report Forms 1, 1–F, 2, 2–A, or 6.[12] The basic financial statements contained in the FERC Annual Report Forms are the Comparative Balance Sheet, the Statement of Income, the Statement of Cash Flows, the Statement of Retained Earnings, and the Statement of Accumulated Comprehensive Income and Hedging Activities.

20. The Comparative Balance Sheet's primary focus is on the financial position of the entity. This information is comprised of the entity's assets, liabilities and equity. Assets represent the valuable resources (*e.g.* probable future economic benefits) used by the entity. The liabilities (*e.g.* probable future economic sacrifices) are the obligations such as debt, accounts payable, and other amounts owed to creditors and others. The equity section of the Comparative Balance Sheet shows the other source of funds (*e.g.* common stock, preferred stock, and retained earnings) that the entity used to acquire its assets.

21. The equity section of the balance sheet is broadly divided into three sections. One section shows the amounts of equity provided by shareholders through the sale of common and preferred stock. A second part shows the amount of earnings resulting from profitable operations that have been retained by the entity commonly referred to as retained earnings. The third section of equity reflects changes in the fair value of certain assets and liabilities resulting from transactions and events from nonowner sources. For example, this section shows the changes in fair value of certain financial instruments due to changes in the market price of those instruments, and changes in the fair value of certain cash flow hedge transactions. This section of equity is generally referred to as accumulated other comprehensive income and is separately shown in the FERC Annual Report Forms in the Statement of Accumulated Comprehensive Income and Hedging Activities schedule.[13]

22. The Income Statement explains how income was earned during the period and is prepared on the accrual

[7] *See* the Commission's Strategic Plan FY 2002 through 2007, and the Chairman's March 5, 2003, testimony before the Subcommittee on Energy and Air Quality of the Commerce, United States House of Representatives, available online at *http://www.ferc.gov/*.

[8] Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g and section 20 of the Interstate Commerce Act (ICA), 49 App. U.S.C. 20 (1988), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purpose of administering the FPA, NGA, and the ICA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

[9] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. 18 CFR part 101 (2003).

[10] Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. 18 CFR part 201 (2003).

[11] Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. 18 CFR part 352 (2003).

[12] *See* 18 CFR parts 141, 260, and 357.

[13] *See* 67 FR 67692 (Nov. 6, 2002), III FERC Statutes and Regulations ¶31,134 (Oct. 10. 2002).

basis of accounting. Net income, which is essentially the difference between revenues and expenses for the period, is added to retained earnings on a periodic basis. The Income Statement's primary focus is on the entity's financial performance or profitability.

23. The Statement of Cash Flows reports the inflow and outflow of cash during the period. While the Income Statement focuses primarily on profitability, the Statement of Cash Flows primarily focuses on liquidity and solvency. Liquidity represents the ability of the entity to meet its current obligations when due, while solvency represents its ability to meet its long-term obligations. The Statement of Cash Flows provides information about a company's ability to generate cash flows in future periods, its capacity to meet obligations, its expected external financing requirements, and how successful investment and financing activities have been managed.

24. Additionally, jurisdictional entities include in the FERC Annual Report Forms a Notes to the Financial Statement schedule which provides additional explanations on the items and amounts reported in the above mentioned financial statements. The Comparative Balance Sheet, Statement of Income, the Cash Flow Statement, the Notes to the Financial Statements, and other schedules contained in the FERC Annual Reports are attested to by an officer of the company. Public utilities and licensees, and natural gas companies also file an auditor's report with the Commission certifying that the financial information contained in the FERC Annual Report Forms conform in all material respects with the requirements of Uniform Systems of Accounts and published accounting releases. In addition to collecting financial information, the FERC Annual Report Forms collect non-financial information about the operations of the entity. These reports are considered non-confidential in nature and therefore made available to the general public.

C. Relevancy of Periodic Financial Information

25. The FERC Annual Report Forms provide the Commission, as well as others, with an informative picture of the jurisdictional entities' financial condition along with other relevant data that is used by the Commission, as well as others, in making economic judgements about the entity or its industry.

26. For financial information to be useful to the Commission, as well as customers, investors and others it must be understandable, relevant, reliable, and timely. As financial reporting has evolved over the years, users of financial data have been willing to forgo some precision in reliability for the ability to obtain the information on more timely intervals, such as on a quarterly basis.

27. Quarterly financial reporting is not a new requirement for public corporations.[14] It began in 1902 when the United States Steel Corporation first published quarterly financial information and by 1910 the New York Stock Exchange added quarterly financial reporting to its listing requirements.[15] Additionally, over the decades public companies have been expanding their financial disclosures to meet the needs of the user community.

28.The trend toward more frequent and better financial disclosures has increased in reaction to highly publicized corporate scandals, business failures and the resulting losses incurred by investors and others. In 2002 Congress passed the Sarbanes-Oxley Act, the most important piece of recent legislation affecting corporate governance, financial disclosure and the practice of public accounting.[16] This act requires public companies to disclose on a rapid and current basis such additional information concerning material changes in the financial condition or operations in plain English for the protection of investors and the public. As a result of this legislation, dates for periodic reporting of financial information have been accelerated, and principle executive and financial officers must each attest to the validity of the financial and other information contained in the periodic reports, including information concerning off-balance sheet arrangements, contingent obligations and comments and other significant items.

29. While some jurisdictional entities may file similar information with the SEC, the level of detail concerning assets, liabilities, stockholder's equity along with the revenues, expenses, gains and losses is different for the Commission and the SEC. The financial statements filed with the SEC are on a consolidated, or parent company basis. The Commission notes that a majority of the jurisdictional entities that it regulates file financial information with the SEC that consolidates their assets, liabilities and profits with their parent company, or combine the regulated and unregulated operations in the reports to the SEC. While consolidation is appropriate for SEC reporting, the Commission requires more detailed information concerning the results of operations, and the financial position of each jurisdictional entity in order to meet its regulatory needs. Therefore, the Commission has required jurisdictional entities to file financial information on a jurisdictional entity level basis using a uniform system of accounts.

30. Although the Commission requires jurisdictional entities to file financial information, a general weakness in this reporting program has been the frequency with which the financial reports are required. In a rapidly changing business environment, annual reporting is simply insufficient. For financial information to be useful to the Commission it must be collected on a more timely basis. In order to improve the decision making of the Commission and other users of the information, we are proposing quarterly reporting of financial and financial related information.

31. Quarterly reporting of financial information will provide the Commission, as well as customers, investors, and others with an important tool to help identify emerging trends and issues affecting jurisdictional entities within the energy industry. It will also provide timely disclosures of the impacts that new accounting standards or changes in existing standards have on jurisdictional entities, as well as the economic effects of significant transactions, events, and circumstances.

32. Furthermore, as the Commission considers implementing new accounting standards it is important that the Commission have timely financial data so that an appropriate assessment can be made of the impact these changes have on jurisdictional entities. The use of financial analytical tools and financial statements, together with the disclosures made in the notes to the financial statements and the MD&A, and other relevant data help staff, as well as, others to assess the credit quality, liquidity, solvency, and the impact that regulatory actions and economic events will have on jurisdictional entities.

33. Quarterly reporting will permit the Commission to better understand trends and other factors that may affect an entity's liquidity position, its commitments of capital expenditures, its sources of financing, along with changes in the amount and types of

[14] *See* President's Ten-Point Plan to Improve Corporate Responsibility and Protect America's Shareholders issued on March 7, 2002. The first two points of the plan state that each investor should have quarterly access to the information needed to judge a firms financial performance, condition, and risks. Additionally, each investor should have prompt access to critical information.

[15] *See* Robert S. Kay and D. Gerald Searfoss, Handbook of Accounting and Auditing (2nd ed. 1989).

[16] *Supra* Note 6.

assets, liabilities, debt and equity used in its business.[18] Transparent accounting and more frequent financial reporting play an important role in achieving vigilant oversight of market participants. More frequent financial reporting will provide needed insight into the opportunities and risks facing the energy industry as the Commission considers and assess the affects of its regulatory initiatives. The Commission shares the view that quarterly reporting will enhance its overall decision making process by providing more timely, useful and relevant data to the decision making process. Therefore, the Commission proposes that jurisdictional entities that are subject to the Commission's Uniform System of Accounts and file a FERC Annual Report Form 1, 1–F, 2, 2–A, or 6 also file quarterly financial statements and related financial information as discussed below.

III. Discussion

A. General

34. The proposed changes will require the filing of quarterly financial statements and certain supplemental information. Additionally, the Commission proposes to update its existing FERC Annual Reports filing requirements in response to the passage of the Sarbanes-Oxley Act of 2002.[17]

B. Proposed Quarterly Financial Reports

35. The proposed changes will require certain forms currently filed annually to be filed on a quarterly basis. The Commission proposes that public utilities and licensees, and natural gas companies that file a FERC Annual Report Forms 1, 1–F, 2 or 2–A, provide quarterly financial and financial related information in the new FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies. Additionally, the Commission proposes that oil pipeline companies that file FERC Annual Report Form No. 6 provide quarterly financial and other information in the new FERC Form No. 6–Q, Quarterly Financial Report of Oil Pipeline Companies. Although these quarterly forms are new, most of the information contained in these forms is the same information currently submitted on an annual basis. Examples of the proposed quarterly report forms are provided in Appendix A.

1. Set of Financial Statements and Other Selected Information

36. Under the proposed rule, public utilities and licensees, natural gas companies and oil pipeline companies will be required to file a set of financial statements on a quarterly basis. The financial statements will be developed using the Commission's Uniform System of Accounts and will be presented in a similar manner as those already filed with the Commission on an annual basis. The financial statements proposed to be included in the quarterly reports are the Comparative Balance Sheet, the Statement of Income and Retained Earnings, the Statement of Cash Flows, and the Statement of Other Comprehensive Income and Hedging Activities. These statements will show the activity for the current quarter as compared to the same quarter of the prior year.

37. As part of collecting a complete set of financial statements, the Commission is proposing to collect certain detailed information already collected on an annual basis. This information includes revenues and the related quantities sold or transported, the operating and maintenance expenses, selected plant cost data, and regulatory asset and liability data which has become more significant in recent years. The quarterly reports will collect information on quantities and volumes sold or transported as is currently collected in the annual reports. Public utilities and licensees will report the amount of megawatt hours sold, natural gas companies will report the amount of dekatherms transported, and oil pipeline companies will report the amount of barrels of crude oil and each kind of product delivered during the period. This data will aid the Commission in monitoring the business conditions and changing events in these industries. The supplementary schedules will also provide the Commission, as well as customers, investors, and others with valuable financial information on more a timely basis, and allow for additional transparency into the financial activities of the entity.

38. The table below summarizes the information that jurisdictional public utilities and licensees, natural gas and oil pipeline companies currently file with the Commission on an annual basis and will be filed in the proposed quarterly report forms.

	Schedules	Public utilities and licensees	Natural gas companies	Oil pipeline companies
1	Important Changes During the Period	✔	✔	✔
2	Comparative Balance Sheet	✔	✔	✔
3	Statement of Income and Retained Earnings	✔	✔	✔
4	Statement of Cash Flows	✔	✔	✔
5	Statement of Accumulated Comprehensive Income and Hedging Activities	✔	✔	✔
6	Notes to the Financial Statements	✔	✔	✔
7	Summary of Utility Plant and Accumulated Provisions for Depre., Amort. and Depletion	✔	✔	✔
8	Electric Plant in Service Not by Function	✔	(1)	(1)
9	Accumulated Provision for Depreciation	✔	✔	✔
10	Public Utility and Licensee Revenues	✔	(1)	(1)
11	Natural Gas Company Revenues	(1)	✔	(1)
12	Oil Pipeline Company Revenues	(1)	(1)	✔
13	Electric Prod., Other Power Supply Exp., and Transmission and Distribution Exp.	✔	(1)	(1)
14	Gas Production and Other Gas Supply Exp.	(1)	✔	(1)
15	Natural Gas Storage, Terminaling, Processing, Transmission and Distribution Expenses	(1)	✔	(1)
16	Oil Carrier Expenses	(1)	(1)	✔
17	Customer Accounts, Service, Sales, Administrative and General Expenses	✔	✔	(1)
18	Other Regulatory Assets	✔	✔	(1)
19	Other Regulatory Liabilities	✔	✔	(1)
20	Transmission of Electricity for Others	✔	(1)	(1)
21	Transmission of Electricity by Others	✔	(1)	(1)

[17] *Supra* note 6.

Schedules	Public utilities and licensees	Natural gas companies	Oil pipeline companies
22 Oil Barrels Delivered	(1)	(1)	✔

[1] Not applicable.

2. Management Discussion and Analysis

39. The Commission is proposing to include a new schedule to the quarterly report entitled Management's Discussion and Analysis of Financial Condition and Results of Operation (commonly referred to as the ''MD&A''). The MD&A schedule is intended to be a forward looking presentation of management's opinion regarding the probable impact of current and future events on the operations of the company. The reporting objectives of this new MD&A schedule are to disclose information necessary for the users of the financial statements to obtain an understanding of the company's financial condition and results of operation. The proposed MD&A schedule should satisfy three related objectives:

1. Provide a narrative explanation of the jurisdictional entity's financial statements that enable the Commission and other users to view the company from management's perspective;

2. Provide overall financial disclosure and provide the context within which financial statements of the jurisdictional entity should be analyzed; and

3. Provide information about the quality of, and potential variability of, a jurisdictional entity's earnings and cash flow, so the Commission, as well as other users, can ascertain the likelihood that past performance is an indicator of future performance.

40. The MD&A is an important aspect in obtaining transparency in financial reporting because it gives the users of financial information an opportunity to monitor the company through the perspective of management on both a short-term and long-term basis. The Commission acknowledges that companies currently file an MD&A with the SEC on a basis of consolidated operations. However, the Commission is proposing to require an MD&A schedule on an individual jurisdictional entity basis for both the quarterly and annual reports as further discussed below.

41. The MD&A schedule will contain a description of events where there is a known trend or uncertainty that is reasonably likely to have a material effect on a jurisdictional company's operations. Management will identify and evaluate current trends to determine the potential impact on the company's operating results and financial position. The Commission will benefit from the most relevant, useful and understandable information regarding jurisdictional companies.

42. The MD&A schedule will include disclosures as they apply to the reporting entity regarding the probable future impacts of regulatory accounting policies; revenue recognition; asset impairment, including goodwill and other intangible assets; environmental contingencies; litigation contingencies; defined benefit pension plans and other post-retirement benefit plans; cost capitalization policies; depreciation expense; decommissioning; asset retirement obligations; self insurance; unique ownership arrangements; guarantees and other assurances; leasing arrangements; related party transactions; and energy trading and other risk management.

43. This list is not intended to be an all inclusive or exhaustive inventory of significant events. Other events that could potentially positively or negatively impact its company, management must be reported under the heading of other significant events.

3. Electric Transmission Peak Loads

44. The Commission is also proposing to obtain in the quarterly and annual reports electric peak load information of the transmission system including the respondent's own use of its transmission system. This information will aid the Commission in evaluating the adequacy of existing traditional cost-based rates.

4. Corporate Officers Certification

45. In reaction to the Sarbanes-Oxley Act of 2002, the Commission is updating its corporate officer certification requirements.[18] The Corporate Officer's Certification Statement is a current requirement of the FERC Annual Reports. The Commission is including the Corporate Officer's Certification Statement as a requirement for the quarterly reports.

46. The updated certification will require that principal executive officer or officers and the principal financial officer or officers, and persons performing similar functions, to certify that each officer has reviewed the quarterly report form and the quarterly report does not contain any untrue statement of material fact, is not misleading, and fairly represents the financial condition of the company. In addition, each officer will certify that they are responsible for establishing and maintaining disclosure controls and procedures, and have designed disclosure controls and procedures to ensure that material information is made known to them. The officers will certify that they have evaluated the effectiveness of the controls and procedures within 90 days prior to the filing date. Each officer will also certify that all significant deficiencies in the design or operation of internal controls, any changes to internal controls, and any fraud were disclosed to the company's auditors and the audit committee. The proposed officer certification for public utilities and licensees, natural gas companies and oil pipeline companies reads as follows:

47. The undersigned officer(s) certifies that:

(1) I have reviewed this FERC Quarterly Financial Report.

(2) Based on my knowledge this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report.

(3) Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly represent in all material respects the financial condition, results of operations and cash flows of the respondent as of, and for the periods presented in this quarterly report.

(4) I am responsible for establishing and maintaining internal controls, and have designed such internal controls to ensure that material information relating to the respondent and its subsidiaries is made known to such officers by others within those entities, particular during the period in which the periodic reports are being presented. I have evaluated the effectiveness of the respondent's internal controls as of a date within 90 days prior to the report, and have presented in the report their conclusions about the effectiveness of

[18] Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, section 302, 116 Stat. 777 (2002). (*codified at* 15 U.S.C. 7241 (2000)).

their internal controls based on their evaluation as of that date.

(5) I have disclosed to the respondent's auditors and the audit committee of the board of directors and the audit committee of the board of directors (or persons fulfilling the equivalent function) that all significant deficiencies in the design or operation of internal controls which could adversely affect the respondent's ability to record, process, summarize and report financial data and have identified for the respondent's auditors any material weaknesses in internal controls; and any fraud, whether or not material, that involves management or other employees who have a significant role in the respondent's internal controls.

(6) I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

5. CPA Review Letter

48. At this time the Commission is not requiring that companies have the proposed quarterly report reviewed by a CPA. However, if a company chooses to have the quarterly report reviewed by a CPA, the company must submit the CPA review letter along with the quarterly report to the Commission.

49. Presently there are significant differences between a CPA ''review'' report for interim financial statements and a CPA ''audit'' report for annual financial statements. A CPA review is substantially less in scope than an audit, and the CPA does not express an opinion as to whether the quarterly financial statements present fairly the financial position of the company, or were prepared in accordance with generally accepted accounting principles (GAAP). In contrast, an audit includes selective examination of the evidence supporting the amounts and disclosures in the financial statements, and includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

50. While it is impractical to obtain an audit for interim financial statements, companies may choose to have a review performed. The Commission is of the view that the CPA review will aid in the reliability of the financial and other information contained in the quarterly report. However, since the CPA is not expressing an opinion on the financial statements presented in the quarterly report, the Commission at this time is not proposing to require companies to have a CPA perform a review of the financial statements contained in the quarterly reports. However, if the Quarterly Report Forms 3–Q and 6–Q are reviewed by a CPA, the company must submit an original CPA review letter to the Commission in accordance with the instructions contained in the quarterly report forms.

6. Who Must File and When

51. The Commission proposes that jurisdictional entities that file FERC Annual Report Forms 1, 1–F, 2, 2–A, or 6 will now be required to submit the FERC Quarterly Forms 3–Q or 6–Q. The Commission proposes the quarterly reports be filed using a phase-in approach.[19]

52. Quarterly reports will be filed 45 days after the end of the quarter for quarters ending before December 15, 2004. Quarterly reports will be filed 40 days after the end of the quarter for quarters ending after December 15, 2004 and before December 15, 2005. Quarterly reports will be filed 35 days after the end of the quarter for quarters ending after December 15, 2005, as shown in the table below:

Quarterly period covered	FERC quarterly report filing due on or before
1 Covered 1/1/2004 through 3/31/2004	May 15, 2004
2 4/1/2004 through 6/30/2004	August 14, 2004
3 7/1/2004 through 9/30/2004	November 14, 2004
4 1/1/2005 through 3/31/2005	May 10, 2005
5 4/1/2005 through 6/30/2005	August 9, 2005
6 7/1/2005 through 9/30/2005	November 9, 2005
7 Subsequent Quarters	35 days after the end of the quarter

7. Update Delegations

53. Finally, the Commission proposes to update the delegations of authority for the Chief Accountant. Under the proposed new delegations, the Chief Accountant will accept delegated authority for accepting the filing of the quarterly report forms when the filing is in compliance with the Commission orders or decisions, or issue a deficiency letter when the filing fails to comply with applicable statutory requirements. Additionally, the proposed delegation will allow the Chief Accountant to deny or grant requests for waiver of the accounting or reporting requirements.

C. Proposed Changes to the FERC Annual Report Forms

54. In addition to adding quarterly reporting requirements, the Commission proposes to update its annual reporting and disclosure requirements by making conforming changes to certain schedules in the FERC Annual Reports so that the information is better aligned with the information collected in the quarterly reports.

55. The Commission also proposes to add a new schedule to the FERC Form 1 and 1–F to collect financial information on the amount of ancillary services purchased and sold during the year, update the corporate officer's certification, accelerate the submission dates of the FERC Annual Reports, allow the CPA certification to be filed electronically, update the statistical classifications used by public utilities and licensees to report transmission transactions, and other minor reporting changes.

1. Fourth Quarter Financial Information

56. The Commission is proposing to make certain revisions to the FERC Annual Reports to report fourth quarter financial data. The Commission proposes to break out fourth quarter data in the income statements contained in the FERC Annual Report Forms 1, 1–F, 2, 2–A, and 6. This data will include the addition of two columns to the Statement of Income for the Year. One column will include fourth quarter data for the current year, and the second column will include fourth quarter data from the prior year. This information will be useful to the Commission for comparative purposes.

57. Currently, the Statement of Cash Flows is presented on a comparative basis only in the FERC Annual Report Forms 2, 2–A and 6. The Commission is proposing to revise the FERC Annual Report Forms 1 and 1–F to include a comparative Statement of Cash Flows to report current year and prior year activity.

58. In addition, the Commission is proposing to report derivative assets and liabilities as current or long-term asset and liabilities on the Comparative Balance Sheet.

[19] Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, § 409, 116 Stat. 791 (2002) requires that companies disclose material changes in financial condition and operations on a rapid and current basis. In response, the SEC has established a phase-in approach for accelerating the filing of SEC forms. The Commission proposes an identical phase-in approach for the filing of FERC Quarterly Forms and accelerating the filing of the FERC Annual Report Forms.

2. New Ancillary Service Schedule

59. The Commission proposes to add a new schedule to the FERC Annual Report Forms 1 and 1–F to collect information on the amount of ancillary services purchased and sold during the year. Under Order No. 888, ancillary services are now offered as part of open access transmission tariffs. These services and related amounts have been reported in an inconsistent manner in the annual reports. Therefore the proposed change would add a new schedule to report the services by the six types of ancillary services described in Order No. 888.[20] Appendix B contains a sample of the proposed new schedule to collect financial data related to ancillary services and the related instructions.

3. Update Corporate Officer Certification

60. In response to the Sarbanes-Oxley Act of 2002, the Commission is updating its corporate officer certification requirements.[21] The Corporate Officer Certification Statement is not a new requirement. The Commission is simply updating the current statement to reflect the current economic environment. The corporate officer certification will contain the same representations as the one previously discussed for the proposed quarterly reports.

4. Acceleration of Annual Report Form Submission

61. The Commission proposes to accelerate the filing date for FERC Annual Report Forms 1, 1–F, 2, 2–A, and 6.[22] Using a phase-in approach, the Commission proposes that all FERC Annual Report Forms be filed within 75 days for the year ending on December 31, 2003. Additionally, the Commission proposes that all FERC Annual Report Forms be filed within 60 days for the year ending December 31, 2004, and each subsequent year as shown in the table below:

Calendar year ending	FERC annual report filing due on or before
1 December 31, 2003	March 17, 2004
2 December 31, 2004	March 1, 2005
3 Each Year Thereafter	March 1

[20] *See* FERC Stats. & Regs., Regulations Preambles January 1991–1996, ¶ 31,036 (1996). *See also* Proforma OATT in Order No. 888, Schedules 1–8 and Attachment F.

[21] *Supra* note 6.

[22] *Supra* note 6.

5. Changes to the CPA Certification Requirements

62. The Commission proposes to accelerate filing dates of the current annual CPA Certification Statement and permit it to be filed electronically. Under the existing Commission requirements, jurisdictional public utilities, licensees and natural gas companies may file their CPA certification letter 30 days after submission of the FERC Annual Report. As part of the acceleration of the FERC Annual Report Forms the Commission is also proposing to accelerate the filing date of the annual CPA Certification Statement. The Commission proposes that the CPA certification be filed electronically on the same date as the FERC Annual Report. The CPA Certification Statement provides the users of the annual financial statements with additional support increasing the reliability of the financial and other information contained in the form. Electronic filing of the CPA certification will reduce the cost of submitting and maintaining the paper document, and improve the accessibility of the document. Finally, for those companies that continue to file a paper CPA Certification Statement, the Commission proposes to accelerate the filing date of the paper CPA Certification Statement from 30 days to 7 days after the FERC Annual Reports are filed.

6. Miscellaneous

63. Finally, as part of the revisions to the FERC Annual Report Forms 1 and 1–F, the Commission proposes to update the statistical classifications billings resulting from the use of the transmission system by others, and the use of the system for others to reflect open access established by Order No. 888. The revised statistical classifications are as follows:

FNS-for Firm Network Transmission Service for Self. ''Firm'' means service that cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. ''Network Transmission Service'' is transmission service as described in Order No. 888 and the Open Access Transmission Tariff.''Self'' means the respondent. FNO-Firm Network Service for Others. ''Firm'' means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. ''Network Service'' is Network Transmission Service as described in Order No. 888 and the Open Access Transmission Tariff.

LFP-for Long-Term Firm Point-to-Point Transmission Reservations. ''Long-term'' means 1 year or longer. ''Firm'' means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions, and ''Point-to-point Transmission Reservations'' are described in Order No. 888 and the Open Access Transmission Tariff. For all transactions identified as LFP, provide in a footnote the termination date of the contract defined as the earliest date either buyer or seller can unilaterally cancel the contract.

OLF-for Other Long-Term Firm Transmission Service. ''Long-term'' means 1 year or longer. This is service provided under contracts which do not conform to the terms of the Open Access Transmission Tariff. ''Firm'' means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. For all transactions identified as OLF, provide in a footnote the termination date of the contract defined as the earliest date either buyer or seller can unilaterally get out of the contracts.

SFP-for Short-Term Firm Point-to-Point Transmission Reservations. This proposed classification is used for all firm point-to-point transmission reservations, where the duration of each period of reservation is less than 1 year.

NF-for Non-Firm Transmission Service, where ''Non-firm'' means service that cannot be interrupted for economic reasons or reliability reasons.

OS-for Other Transmission Service, where ''Firm'' means service that cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions.

AD-for Out-of-Period Adjustments. Use this code for any accounting adjustments or ''true-ups'' for service provided in prior reporting periods. Provide an explanation in a footnote for each adjustment.

IV. Regulatory Flexibility Act Statement

64. The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[23] The Commission is not required to make such analyses if a rule would not have such an effect.

65. The Commission concludes that this rule would not have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of a small

[23] 5 U.S.C. 601–612.

entity.[24] As previously mentioned, the Commission concludes that this reporting would not be a significant burden to industry since the information is already being captured by their accounting systems and generally being reported to shareholders and others at a company, or at a consolidated business level. However, if the reporting requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the disclosure requirements from the Commission.

V. Environmental Analysis

66. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[25] No environmental consideration is raised by the promulgation of a rule that is procedural or does not substantially change the effect of legislation or regulations being amended.[26] The proposed rule updates the Parts 141, 260, 357 and 375 of the Commission's regulations, and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

VI. Information Collection Statement

67. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondent's burden, including the use of automated information techniques.

Estimated Annual Burden

68. The Commission estimates that on average it will take respondents 24 hours to comply with the proposed requirements. This will result in total hours for the following collections of information:

Data collection form (a)	Number of respondents (b)	Number of hours (c)	Filing periods (d)	Total annual hours (e)=(b)×(c)×(d)
1 FERC Form 3–Q	331	24	3	23,832.0
2 FERC Form 6–Q	159	24	3	11,448.0
3 FERC Form 1	216	1	1	216.0
4 FERC Form 17–F	26	1	1	26.0
5 FERC Form 2	57	½	1	28.5
6 FERC Form 2–A	53	½	1	26.5
7 FERC Form 6	159	½	1	79.5
8 Totals				35,656.5

Total Annual Hours for Collection

(Reporting + Recordkeeping, (if appropriate)) = 35,656.5 hours.

* This estimate is based on an average of 24 hours per respondent for recordkeeping purposes.

69. OMB's regulations require it to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.[27]

Title:

FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees, and Others;

FERC Form No. 1–F, Annual Report for Non-Major Public Utilities and Licensees;

FERC Form No. 2, Annual Report for Major Natural Gas Companies;

FERC Form No. 2–A, Annual Report for Non-Major Natural Gas Companies;

FERC Form No. 3–Q, Quarterly Financial Report of Electric Utilities, Licensees, and Natural Gas Companies;

FERC Form No. 6, Annual Report for Oil Pipeline Companies;

FERC Form No. 6–Q, Quarterly Financial Report of Oil Pipeline Companies.

Action: Proposed Collections.

OMB Control No.: To be determined.

Respondents: Business or other for profit.

Frequency of Responses: Quarterly.

Necessity of the Information: The proposed rule would revise the Commission's reporting requirements to improve financial transparency for jurisdictional companies. Transparent reporting of financial information and better financial disclosures proposed in this rule will help the Commission identify emerging trends and issues affecting energy companies, and thus provide more vigilant oversight of the regulated companies. The improved transparency brought about by more frequent financial reporting will help restore investor confidence in the energy industry.

70. Quarterly reporting of financial information will provide the Commission with an important tool to timely identify issues affecting jurisdictional entities within the energy industry. It will aid the Commission in assessing the economic consequences of transactions and events on jurisdictional entities, measuring the effects of regulatory initiatives, evaluating the adequacy of existing traditional cost-based rates, and aid in the development of needed changes to existing regulatory initiatives.

71. Although the Commission currently requires jurisdictional entities to file financial information on an annual basis, a general weakness in this reporting program has been the frequency with which these reports are required. In a rapidly changing business environment, annual reporting is simply insufficient. For financial information to be useful to the Commission it must be collected on a more timely basis.

72. *Internal Review:* The Commission has reviewed the requirements pertaining to the Uniform Systems of Accounts and to the financial reports it prescribes and determined the proposed revisions are necessary to obtain more timely, relevant, reliable and understandable financial information from major participants in the energy market. More frequent reporting of financial information will provide the

[24] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

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

[26] 18 CFR 380.4(a)(2)(ii).

[27] 5 CFR 1320.11.

Commission and the investing public with an important tool to help identify emerging trends, business conditions, and issues affecting jurisdictional entities within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

73. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 208–2425, e-mail: *michael.miller@ferc.gov*)

74. For submitting comments concerning the collections of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–7318, fax: (202) 395–7285).

VII. Comment Procedures

75. The Commission invites all interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 6, 2003. Comments must refer to Docket No. RM03–8–000, and must include the commenter's name, the organization they represent, if applicable, and their address in the comments. Comments may be filed either in electronic or paper format.

76. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

77. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

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

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

80. User assistance is available for FERRIS and the FERC's Web site during normal business hours by contacting FERC Online Support by e-mail at *FERCOnlineSupport@ferc.gov* or by telephone at 866–208–3676 (toll free), or for TTY, contact (202) 502–8659.

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 375

Authority delegations (Government agencies).

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 141, 260, 357 and 375, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 141.1, paragraph (b)(2) is revised to read as follows:

§ 141.1 FERC Form No. 1, Annual report of Major electric utilities, licensees, and others.

* * * * *

(b) *Filing requirements.* * * *

(2) *When to file and what to file:* This report shall be filed as follows:

(i) The annual report for the year ending December 31, 2003, will be filed on March 17, 2004.

(ii) The annual report for the year ending December 31, 2004, will be filed on March 1, 2005.

(iii) The annual report for each year thereafter will be filed on March 1 of the subsequent year.

(iv) This report must be filed with the Federal Energy Regulatory Commission as prescribed in § 385.2011 of this chapter and as indicated in the General Instructions set out in this form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter is required.

3. In § 141.2, paragraph (b)(2) is revised as follows:

§ 141.2 FERC Form No. 1–F, Annual report for Nonmajor public utilities and licensees.

* * * * *

(b) *Filing requirements.* * * *

(2) *When to file:* This report shall be filed as follows:

(i) The annual report for the year ending December 31, 2003, will be filed on March 17, 2004.

(ii) The annual report for the year ending December 31, 2004, will be filed on March 1, 2005.

(iii) The annual report for each year thereafter will be filed on March 1 of the subsequent year.

4. Section 141.400 is added to read as follows:

§ 141.400 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

(a) *Prescription.* The Form of Quarterly Report of electric utilities, licensees, and natural gas companies, designated herein as FERC Form No. 3–Q, is prescribed for the reporting quarter ending March 31, 2004, and each quarter thereafter.

(b) *Filing requirements.* (1) *Who must file*—(i) *Generally* Each electric utility (as defined in Part 101 of Subchapter C of this chapter) and other entity, *i.e.*, each corporation, person, or licensee as defined in section 3 of the Federal Power Act (16 U.S.C. 792 *et seq.*), including any agency or instrumentality

engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service, whether or not the jurisdiction of the Commission is otherwise involved, shall prepare and file with the Commission FERC Form 3–Q pursuant to the General Instructions set out in that form.

(ii) *Exceptions.* This report form is not prescribed for any agency, authority or instrumentality of the United States, nor is it prescribed for municipalities as defined in section 3 of the Federal Power Act; (*i.e.*, a city, county, irrigation district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power).

(2) *When to file and what to file.* This quarterly report form must be filed as follows:

(i) The quarterly report for the period January 1 through March 31, 2004, must be filed on or before May 15, 2004.

(ii) The quarterly report for the period April 1 through June 30, 2004, must be filed on or before August 14, 2004.

(iii) The quarterly report for the period July 1 through September 30, 2004, must be filed on or before November 14, 2004.

(iv) The quarterly report for the period January 1 through March 31, 2005, must be filed on or before May 10, 2005.

(v) The quarterly report for the period April 1, 2005 through June 30, 2005, must be filed on or before August 9, 2005.

(vi) The quarterly report for the period July 1, 2005 through September 30, 2005, must be filed on or before November 9, 2005.

(vii) The quarterly report for the period January 1 through March 31, 2006, must be filled on or before May 5, 2006.

(viii) Subsequent quarterly reports must be filed within 35 days from the end of the reporting quarter.

(ix) This report must be filed as prescribed in § 385.2011 of this chapter and as indicated in the general instructions set out in the quarterly report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the reporting quarter ending March 31, 2004, due on or before May 15, 2004.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

6. In § 260.1, paragraph (b) is revised as follows:

§ 260.1 FERC Form No. 2, Annual report for Major natural gas companies.

* * * * *

(b) *Filing requirements.* Each natural gas company, as defined by the Natural Gas Act (15 U.S.C. 717, *et seq.*) which is a major company (a natural gas company whose combined gas transported or stored for a fee exceed 50 million Dth in each of the three previous calender years) must prepare and file with the Commission, as follows:

(1) The annual report for the year ending December 31, 2003 will be filed on March 17, 2004.

(2) The annual report for the year ending December 31, 2004 will be filed on March 1, 2005.

(3) The annual report for each year thereafter will be filed on March 1 of the subsequent year.

(4) Newly established entities must use projected data to determine whether FERC Form No. 2 must be filed.

(5) The form must be filed in electronic format only, as indicated in the general instructions set out in that form. The format for the electronic filing can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426. One copy of the report must be retained by the respondent in its files.

7. In § 260.2, paragraph (b) is revised to read as follows:

§ 260.2 FERC Form No. 2–A, Annual reports for Nonmajor natural gas companies.

* * * * *

(b) *Filing requirements:* Each natural gas company, as defined by the Natural Gas Act, not meeting the filing threshold for FERC Form No. 2, but having total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years, must prepare and file with the Commission as follows:

(1) The annual report for the year ending December 31, 2003, will be filed on March 17, 2004.

(2) The annual report for the year ending December 31, 2004, will be filed on March 1, 2005.

(3) The annual report for each year thereafter will be filed on March 1 of the subsequent year.

(4) Newly established entities must use projected data to determine whether FERC Form No. 2–A must be filed.

(5) This report must be filed as prescribed in § 385.2011 of this chapter and as indicated in the general instructions set out in the quarterly report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the reporting quarter ending March 31, 2004, due on or before May 15, 2004. One copy of the report must be retained by the respondent in its files.

8. Section 260.300 is added to read as follows:

§ 260.300 FERC Form No. 3–Q, Quarterly financial report of electric utilities, licensees, and natural gas companies.

(a) *Prescription.* The Form of Quarterly Report of electric utilities, licensees, and natural gas companies, designated herein as FERC Form No. 3–Q, is prescribed for the reporting quarter ending March 31, 2004, and each quarter thereafter.

(b) *Filing requirements.* (1) *Who must file.* Each natural gas company, (as defined in the Natural Gas Act (15 U.S.C. 717, *et seq.*) must prepare and file with the Commission a FERC Form No. 3–Q.

(2) *When to file and what to file.* This quarterly report form must be filed as follows:

(i) The quarterly report for the period January 1 through March 31, 2004, must be filed on or before May 15, 2004.

(ii) The quarterly report for the period April 1 through June 30, 2004, must be filed on or before August 14, 2004.

(iii) The quarterly report for the period July 1 through September 30, 2004, must be filed on or before November 14, 2004.

(iv) The quarterly report for the period January 1 through March 31, 2005, must be filed on or before May 10, 2005.

(v) The quarterly report for the period April 1, 2005 through June 30, 2005, must be filed on or before August 9, 2005.

(vi) The quarterly report for the period July 1, 2005 through September 30, 2005, must be filed on or before November 9, 2005.

(vii) The quarterly report for the period January 1 through March 31, 2006, must be filed on or before May 5, 2006.

(viii) Subsequent quarterly reports must be filed within 35 days from the end of the reporting quarter.

(ix) This report must be filed as prescribed in § 385.2011 of this chapter and as indicated in the general instructions set out in the quarterly report form, and must be properly completed and verified. Filing on

electronic media pursuant to § 385.2011 of this chapter will be required commencing with the reporting quarter ending March 31, 2004, due on or before May 15, 2004. One copy of the report must be retained by the respondent in its files.

PART 357—ANNUAL SPECIAL OR PERIODIC REPORTS: CARRIERS SUBJECT TO PART I OF THE INTERSTATE COMMERCE ACT

9. The authority citation for part 357 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

10. In § 357.2, paragraph (b) is revised as follows:

§ 357.2 FERC Form No. 6, Annual report of oil pipeline companies.

* * * * *

(b) *When to file:* This report shall be filed as follows:

(1) The annual report for the year ending December 31, 2003, will be filed on March 17, 2004.

(2) The annual report for the year ending December 31, 2004, will be filed on March 1, 2005.

(3) The annual report for each year thereafter will be filed on March 1 of the subsequent year.

* * * * *

11. Section 357.4 is added to read as follows:

§ 357.4 FERC Form No. 6–Q, Quarterly Report of Oil Pipeline Companies.

(a) *Prescription.* The Form of Quarterly Report of oil pipeline companies, designated herein as FERC Form No. 6–Q, is prescribed for the reporting quarter ending March 31, 2004, and each quarter thereafter.

(b) *Filing requirements.* (1) *Who must file.* Each oil pipeline company, subject to the provisions of section 20 of the Interstate Commerce Act must prepare and file with the Commission a FERC Form No. 6–Q.

(2) *When to file and what to file.* This quarterly report form must be filed as follows:

(i) The quarterly report for the period January 1 through March 31, 2004, must be filed on or before May 15, 2004.

(ii) The quarterly report for the period April 1 through June 30, 2004, must be filed on or before August 14, 2004.

(iii) The quarterly report for the period July 1 through September 30, 2004, must be filed on or before November 14, 2004.

(iv) The quarterly report for the period January 1 through March 31, 2005, must be filed on or before May 10, 2005.

(v) The quarterly report for the period April 1, 2005 through June 30, 2005, must be filed on or before August 9, 2005.

(vi) The quarterly report for the period July 1, 2005 through September 30, 2005, must be filed on or before November 9, 2005.

(vii) The quarterly report for the period January 1 through March 31, 2006, must be filed on or before May 5, 2006.

(viii) Subsequent quarterly reports must be filed within 35 days from the end of the reporting quarter.

(ix) This report must be filed as prescribed in § 385.2011 of this chapter and as indicated in the general instructions set out in the quarterly report form, and must be properly completed and verified. Filing on electronic media pursuant to § 385.2011 of this chapter will be required commencing with the reporting quarter ending March 31, 2004, due on or before May 15, 2004.

PART 375—THE COMMISSION

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

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

13. In § 375.303, paragraphs (d) and (e) are added to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(d) Accept for filing Quarterly Report Form Nos. 3–Q and 6–Q if such filings are in compliance with Commission orders or decisions, and when appropriate, notify the party of such acceptance. Issue and sign deficiency letters if the filing fails to comply with applicable statutory requirements, and with all applicable Commission rules, regulations, and orders for which a waiver has not been granted.

(e) Deny or grant, in whole or in part, requests for waiver of the reporting requirements for the forms under §§ 141.400, 260.300, and 357.400 of this chapter and the filing of these forms on electronic media under § 385.2011 of this chapter.

Note: The following appendices will not appear in the Code of Federal Regulations.

BILLING CODE 6717–01–P

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Form Approved
OMB No. _____
(Expires Month/Day/Year)

THIS FILING IS:
___ An Initial (Original) Application or ___ Resubmission No.____
RESPONDENT IS:
____(E) Electric Utility, Licensee ____(G) Natural Gas Company

FERC FORM No. 3-Q: QUARTERLY FINANCIAL REPORT OF ELECTRIC UTILITIES, LICENSEES, AND NATURAL GAS COMPANIES

This report is mandatory under the Federal Power Act, Sections 3, 4(a), 304, 309, and 18 CFR 141.400, for public utilities and licensees, and under the Natural Gas Act, Sections 10(a), 16, and 18CFR 260.300, for natural gas companies. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider this report to be of a confidential nature.

Exact Legal Name of Respondent (Company)	For The Quarter Ending
_____	____Month/Day/Year_____

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.
LIST OF SCHEDULES

Enter in columns (a) and (b) the terms 'none", "not applicable" as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none" or "not applicable".

Line No.	Title of Schedule	Page No.	Electric Utility, Licensee (a)	Natural Gas Company (b)
1	General Information	4-5		
2	Excerpts From the Law and General Penalties	6-7		
3	General Instructions	8-9		
4	Identification	10		
5	Officer Certification	11		
6	Important Changes During the Quarter	12		
7	Comparative Balance Sheet	13-17		
8	Statement of Income and Retained Earnings	18-22		
9	Statement of Cash Flows	23-25		
10	Statement of Accumulated Comprehensive Income and Hedging Activities	26-27		
11	Notes to the Financial Statements	28		
12	Management Discussion and Analysis of Financial Condition and Results of Operations	29		
13	Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization and Depletion	30-31		
14	Plant in Service and Accumulated Provision for Depreciation By Function	32		
15	Public Utility and Licensees - Electric Revenues and Megawatt Hours	33		
16	Natural Gas Company - Gas Revenues and Dekatherms	34		
17	Depreciation, Depletion and Amortization Expenses of Utility Plant	35		
18	Electric Production, Other Power and Transmission and Distribution Expenses	36		
19	Gas Production and Other Gas Supply Expenses	37		
20	Natural Gas Storage, Terminaling, Processing, Transmission and Distribution Expenses	38		
21	Customer Accounts, Service, Sales, Administrative and General Expenses	39		
22	Other Regulatory Assets	40		
23	Other Regulatory Liabilities	41		
24	Transmission of Electricity For Others	42-43		
25	Transmission of Electricity By Others	44		
26	Monthly Peak Loads and Energy Output	45		

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Line No.	Title of Schedule	Page No.	Electric Utility, Licensee (a)	Natural Gas Company (b)
27	Monthly Transmission System Peak Load	46		

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

GENERAL INFORMATION

I. Purpose

This form is a regulatory support requirement under 18 CFR 141.400 and 18 CFR 260.300. It is designed to collect financial and operational informational from electric utilities, licensees, and natural gas companies subject to the jurisdiction of the Federal Energy Regulatory Commission. This report is also considered to be a nonconfidential public use form.

II. Who Must File

(a) Each major and non-major electric utility and licensee as classified in the Commission's Uniform System of Accounts Prescribed for Public Utilities and Licensees (18 CFR Part 101) subject to the provisions of the Federal Power Act, must submit the form.

Note: Major means having, in each of the three previous calendar years, sales or transmission service that exceeds one of the following:

(1) one million megawatt hours of total annual sales,
(2) 100 megawatt hours of annual sales for resale,
(3) 500 megawatt hours of annual power exchanges delivered, or
(4) 500 megawatt hours of annual wheeling for others (deliveries plus losses).

Non-major means having total annual sales of 10,000 megawatt-hours or more in the previous calendar year and not classified as Major.

(b) Each natural gas company as classified in the Commission's Uniform System of Accounts Prescribed for Natural Gas Companies (18 CFR Part 201) subject to the provisions of the Natural Gas Act, must submit the form.

III. What and Where to Submit

(a) Submit this form electronically through the Form 3-Q Submission Software. Retain one copy of this report for your files.

(b) Respondents may submit the Officer Certification electronically, or file an original signed certification to:

Chief Accountant
888 First Street N.E.
Washington, DC 20426

(c) If the financial statements contained in this report are reviewed by a Certified Public Accountant, the CPA review letter must accompany this report. The financial statements are the Comparative Balance Sheet, Statement of Income and Retained Earnings, the Statement of Cash Flows, and the Statement of Accumulated Comprehensive Income and Hedging Activities, along with the related notes to these statements. Please mail one copy of the CPA review letter to:

Chief Accountant
888 First Street N.E.
Washington, DC 20426

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

GENERAL INFORMATION (continued)

IV. When to Submit

(a) Submit this report form according the filing dates contained in sections 18 CFR 141.400 and 18 CFR 260.300 of the Commission's regulations.

V. Where to Send Comments on Public Reporting Burden

(a) The public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 (Attention: Michael Miller, ED-30); and to the Office of Information and Regulatory Affairs, Office of the Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

(b) You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

EXCERPTS FROM THE LAW AND GENERAL PENALTIES

Federal Power Act, 16 U.S.C. 791a-825r

"Sec. 3. The words defined in this section shall have the following meanings for the purposes of this Act, to wit: ... (3) "Corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include municipalities, as hereinafter defined;
(4) "Person" means an individual or corporation;
(5) "Licensee" means any person, State or municipality Licensed under the provisions of section 4 of this Act, and any assignee or successor in interest thereof;
(7) "municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a state competent under the laws thereof to carry the business of developing, transmitting, unitizing, or distributing power; ..."
(11) "Project" means a complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in the lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

"Sec. 4. The Commission is hereby authorized and empowered:
(a) To make investigations and to collect and record data concerning the utilization of the water resources of any region to be developed, the water-power industry and its relation to other industries and to interstate or foreign commerce, and concerning the location, capacity, development costs, and relation to markets of power sites; ... to the extent the Commission may deem necessary or useful for the purposes of this Act."

"Sec. 304. (a) Every Licensee and every public utility shall file with the Commission such annual and other periodic or special reports as the Commission may be rules and regulations or other prescribe as necessary or appropriate to assist the Commission in the proper administration of this Act. The Commission may prescribe the questions upon which the Commission may need information. The Commission may require that such reports shall include, among other things, full information as to the assets and liabilities, capitalization, net investment, and reduction thereof, gross receipts, interest due and paid, depreciation, generation, transmission, distribution, delivery, use, and sale of electric energy. The Commission may require any such person to make adequate provision for currently determining such costs and other facts. Such reports shall be made under oath unless the Commission otherwise specifies."

"Sec. 309. The Commission shall have power to preform any and all acts, and to prescribe, issue, and make, and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this Act; and may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within they shall be filed..."

General Penalties

"Sec. 315. (a) Any licensee or public utility which willfully fails, within the time prescribed by the Commission, to comply with any order of the Commission, to file any report required under this Act or any rule or regulation of the Commission thereunder, to submit any information of document required by the Commission in the course of an investigation conducted under this Act ... shall forfeit to the United States an amount not exceeding $1,000 to be fixed by the Commission after notice and opportunity for hearing..."

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

EXCERPTS FROM THE LAW AND GENERAL PENALTIES

Natural Gas Act, 15 U.S.C. 717-717w

"Sec. 10(a). Every natural-gas company shall file with the Commission such annual and other periodic or special reports as the Commission may by rules and regulations or order prescribe as necessary or appropriate to assist the Commission in the proper administration of this act. The Commission may prescribe the manner and form in which such reports shall be made and require from such natural-gas companies specific answers to all questions upon which the Commission may need information. The Commission may require that such reports include, among other things, full information as to assets and liabilities, capitalization, investment and reduction thereof, gross receipts, interest dues and paid, depreciation, amortization, and other reserves, cost of facilities, costs of maintenance and operation of facilities for the production, transportation, delivery, use, or sale of natural gas, costs of renewal and replacement of such facilities, transportation, delivery, use and sale of natural gas..."

"Section 16. The Commission shall have power to perform all and any acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this act. Among other things, such rules and regulations may define accounting, technical, and trade terms used in this act; and may prescribe the form or forms of all statements declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and time within they shall be filed..."

General Penalties

"Sec. 21(b). Any person who willfully and knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Commission under authority of this act, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine of not exceeding $500 for each and every day during which such offense occurs."

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

GENERAL INSTRUCTIONS

(a) Prepare this report in conformity with the Uniform Systems of Accounts, 18 CFR Parts 101 and 201. Interpret all accounting words and phrases in accordance with the Uniform Systems of Accounts.

(b) Complete each question fully and accurately, even if it has been answered in a previous quarterly report. Enter the word "None" where it truly and completely states the fact.

(c) Enter the month, day, and year for all dates. Use customary abbreviations. The "Date of Report" included in the header of each page is to be completed only for resubmissions. The date of the resubmission must be reported in the header for all form pages, whether or not they are changed from the previous filing.

(d) For any resubmissions, submit the electronic filing using the Form 3-Q Submission Software.

(e) Enter dollar amounts in whole numbers. Generally, except for certain schedules, all numbers, whether they are expected to be debits or credits, must be reported in the positive. Numbers having a sign that is different from the expected sign must be reported by enclosing the numbers in parentheses.

(f) Definitions for statistical classifications used for completing schedules for transmission system reporting are as follows:

FNS-Firm Network Transmission Service for Self. "Firm" means service that can not be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Network Service" is Network Transmission Service as described in Order No. 888 and the Open Access Transmission Tariff. "Self" means the respondent.

FNO-Firm Network Service for Others. "Firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Network Service" is Network Transmission Service as described in Order No. 888 and the Open Access Transmission Tariff.

LFP- for Long-Term Firm Point-to-Point Transmission Reservations. "Long-Term" means one year or longer and "firm" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. "Point-to-Point Transmission Reservations" are described in Order No. 888 and the Open Access Transmission Tariff. For all transactions identified as LFP, provide in a footnote the termination date of the contract defined as the earliest date either buyer or seller can unilaterally cancel the contract.

OLF- Other Long-Term Firm Transmission Service. Report service provided under contracts which do not conform to the terms of the Open Access Transmission Tariff. "Long-Term" means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions. For all transactions identified as OLF, provide in a footnote the termination date of the contract defined as the earliest date either buyer or seller can unilaterally get out of the contract.

SFP- for Short-Term Firm Point-to-Point Transmission Reservations. Use this classification for all firm point-to-point transmission reservations, where the duration of each period of reservation is less than one-year.

NF-for Non-Firm Transmission Service, where firm means that service cannot be interrupted for economic reasons and is intended to remain reliable even under adverse conditions.

OS-for Other Transmission Service. Use this classification only for those services which can not be placed in the above-mentioned classifications, such as all other service regardless of the length of the contract and service form. Describe the type of service in a footnote for each entry.

AD-for Out-of-Period Adjustments. Use this code for any accounting adjustments or "true-ups" for service provided in prior reporting periods. Provide an explanation in a footnote for each adjustment.

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Appendix A: Form 3-Q and 6-Q Samples.

GENERAL INSTRUCTIONS

(g) For the Management's Discussion and Analysis of Financial Condition and Results of Operation schedule provide a forward-looking discussion of management's assessment of the probable future impacts of specific identified significant current events and future events on the respondent's operations and financial position. Specifically address the following details as they apply to the respondent.

(1) Regulatory accounting policies - provide a description of the impact of competition, the changing regulatory framework in which the respondent operates, and an assessment of the impact should a change in a critical accounting policy occur.

(2) Revenue recognition - provide a description of the possible impacts associated regulation for revenue recognition, along with a description of the revenue accounting model used and the major assumptions associated with the model. In addition, provided a description of the probable future impacts associated with a change in the revenue accounting model used.

(3) Asset impairment, including goodwill and other intangible assets - provide a description of the possible impacts of variations in assumptions used for these measurements, and provide a description of the possible future impacts should a change in a major assumption occur.

(4) Environmental contingencies - provide a description of the possible future impacts associated with environmental regulations including a description of possible capital expenditures associated with such regulations, and the impact on the respondent's financial position.

(5) Litigation contingencies - provide a description of the possible future impacts associated with potential litigation or other unresolved litigation including a description of possible capital expenditures associated with such litigation contingencies and the impact on the respondent's financial position.

(6) Defined benefit pension plans and other post-retirement benefit plans - provide a description of the possible future impacts regarding potential changes as they relate to liquidity, capital resources, and the methods used to fund the plans.

(7) Cost capitalization policies - provide a description of possible impacts on the respondent's operations, financial position, and cash flow as it relates to magnitude of the cost associated with construction, retirement and replacement of plant property and equipment. Specifically address the possible future impact on earnings trends and liquidity.

(8) Depreciation expense - provide a description of the possible future impact of a change in the significant assumptions used to estimate depreciation expense. Additionally, describe any differences in recovery of depreciation expense due to rate setting bodies accelerating the recovery of certain assets that may have risk of becoming stranded costs.

(9) Decommissioning - provide a description of the possible future impacts of a change in the basis of estimation and factors which may result in a change in estimates, and provide a description of the impact of such a change occurring would have on the respondent's operations and financial position.

(10) Asset retirement obligations - provide a description of the possible future impacts associated with a change in the major assumptions, strategies for asset retirement obligations and provide a description of factors that may result in changes in estimates.

(11) Self insurance - provide a description the possible future impacts associated with exposure to uninsured risks including a description of the financial requirements associated with a potential loss. Include a description the amount of coverage where there is a significant discrepancy between insurance coverage by similar companies within the same industry. Also, provide a description of risk sharing agreements with others including the amount of exposure, funding requirements of the exposure, and the potential impact on the respondent's operations due to such exposure.

(12) Unique ownership arrangements - provide a description of the possible future impacts on the company's operations and financial position of potential changes in unique ownership agreements. The description will include earnings and loss allocations, buy-out agreements, and other significant management items related to the unique ownership agreement.

(13) Guarantees and other assurances - provide a description of the potential impact of guarantees and other assurances on the respondent's operations and financial position. Include a description the economic impact of significant contractual obligations along with the probability of an event occurring that would trigger the guarantee. Include a description of the potential impact of the respondent's liquidity and it's capital resources.

(14) Off-balance sheet financing - provide a description and explanation of the possible future impacts on the company's financial position and operations regarding off-balance sheet financing obligations. Include a description of the assets involved, the potential effects of termination agreements, and the amounts of purchase or sale agreements between the company and the off-balance sheet entity.

(15) Related party transactions - provide a description of the possible effects on the respondent's financial condition and operations associated with related party transactions. Provide a description of the purpose of the arrangement, parties involved, determination of transaction prices and actual transaction prices, and any ongoing contractual arrangements along with the potential impact on the respondent's operations associated with such transactions.

(16) Energy trading and other related risk management - provide a description of the potential impact on the respondent's financial operations associated with potential changes in fair value due to valuation techniques and disclose maturities of contracts less than one year, between one and three years, between four and five years, and maturities exceeding five years. Additionally disclose the impact of obligations regarding trading risks and credit quality, impacts of risks associated with market fluctuations, and impacts of risks associated with linked or indexed assets or liabilities.

(17) Other significant items - provide a description of other probable future events that could potentially impact the respondent's operations and financial position.

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ____(E) Or ____(G)	____ An Original ____A Resubmission	__Month/Day/Year_	___Month/Day/Year____

IDENTIFICATION

	Item
1	Exact Legal Name of Respondent _____
2	Previous Name and Date of Change (If name changed during the period) _____
3	Address of Principal Office at End of Period _____ _____
4	Name of Contact Person _____
5	Title of Contact Person _____
7	Address of Contact Person (Street, City, State, Zip Code) _____ _____
8	Telephone of Contact Person, (Including Area Code) _____

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or _____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

OFFICER CERTIFICATION

The undersigned officer(s) certifies that:

(1) I have reviewed this FERC Form No. 3-Q, Quarterly Financial Report.

(2) Based on my knowledge this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report.

(3) Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly represent in all material respects the financial condition, results of operations and cash flows of the respondent as of, and for the periods presented in this quarterly report.

(4) I am responsible for establishing and maintaining internal controls, and have designed such internal controls to ensure that material information relating to the respondent and its subsidiaries is made known to such officers by others within those entities, particular during the period in which the periodic reports are being presented. I have evaluated the effectiveness of the respondent's internal controls as of a data within 90 days prior to the report, and have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date.

(5) I have disclosed to the respondent's auditors and the audit committee of the board of directors and the audit committee of the board of directors (or persons fulfilling the equivalent function)that all significant deficiencies in the design or operation of internal controls which could adversely affect the respondent's ability to record, process, summarize and report financial data and have identified for the respondent's auditors any material weaknesses in internal controls; and any fraud, whether or not material, that involves management or other employees who have a significant role in the respondent's internal controls.

(6) I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Line No.	Name(s) of Certifying Officials	Signature	Title	Date
1				
2				
3				
4				

Title 18, U.S.C. 1001 makes it a crime for any person to knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ____(E) Or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day /Year

IMPORTANT CHANGES DURING THE QUARTER

Give particulars (details) concerning the matters indicated below. Make the statements explicit and precise, and number them in accordance with the inquires. Each inquiry should be answered. Enter "none", "not applicable", or "NA" where applicable.

1. Changes in and important additions to franchise rights: Describe the actual consideration given therefore and state from whom the franchise rights were acquired. If acquired without the payment of consideration, state that fact.

2. Acquisition of ownership in other companies by reorganization, merger, or consolidation with other companies: Give names of companies involved, particulars concerning the transactions, name of Commission authorizing the transaction, and reference to Commission authorization.

3. Purchase or sale of an operating unit or system: Give a brief description of the property, and of the transactions relating thereto, and reference to Commission authorization, if any was required. Give date journal entries called for by the Uniform System of Accounts were submitted to the Commission.

4. Important leaseholds (other than leaseholds for natural gas lands) that have been acquired or given, assigned or surrendered: Give effective dates, lengths of terms, names of parties, rents and other condition. State name of Commission authorizing lease and give reference to such authorization.

5. Important extension or reduction of transmission or distribution system: State territory added or relinquished and date operations began or ceased and give reference to Commission authorization, if any was required. State also the approximate number of customers added or lost and approximate annual revenues of each class of service. Each natural gas company must also state major new continuing sources of gas made available to it from purchases, development, purchase contract or otherwise, giving location and approximate total gas volumes available, period of contracts, and other parties to such arrangements, etc.

6. Obligations incurred as a result of issuance of securities or assumption of liabilities or guarantees including issuance of short term debt and commercial paper having a maturity of one year or less. Give reference to FERC or State Commission authorization, as appropriate, and the amount of the obligation or guarantee.

7. Changes in articles of incorporation or amendments to charter. Explain the nature and purpose of such changes or amendments.

8. State the estimated annual effect and nature of any important wage scale changes during the period.

9. State briefly the status of any materially important legal proceedings pending at the end of the period, and the results of any such proceedings culminated during the period.

10. Describe briefly any material important transactions of the respondent not disclosed elsewhere in this report in which an officer, director, security holder reported in the last Annual Report FERC Form 1, 1-F, 2 or 2-A, voting trustee, associated company or known associate of any of these persons was a party or in which such person had a material interest.

11. Describe fully any changes in officers, directors, major security holders and voting powers of the respondent that may have occurred during the reporting period.

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ____(E) Or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

COMPARATIVE BALANCE SHEET

	ASSETS	Current Year End of Quarter Balance Month/Day/Year	Prior Year End of Quarter Balance Month/Day/Year
1	**UTILITY PLANT**		
2	Utility Plant (101 and 103)		
3	Property Under Capital Leases (101.1)		
4	Plant Purchased or Sold (102)		
5	Plant Leased to Others (104)		
6	Plant Held for Future Use (105)		
7	Completed Construction Not Classified (106)		
8	Construction Work in Progress (107)		
9	Plant Acquisition Adjustments (114)		
10	(Less) Accum. Prov. for Depre., Amort. Depletion (108,111)		
11	(Less) Accum. Prov. for Amort. of Plant Adj. (115)		
12	Nuclear Fuel in Process (120.1)		
13	Nuclear Fuel Materials and Assembles-Stock (120.2)		
14	Nuclear Fuel Assemblies in Reactor (120.3)		
15	Spent Nuclear Fuel (120.4)		
16	(Less) Accum. Prov. For Amort. of Nuclear Fuel (120.5)		
17	Nuclear Fuel Under Capital Leases (120.6)		
18	Other Plant Adjustments (116)		
19	Gas Stored Base Gas (117.1)		
20	System Balancing Gas (117.2)		
21	Gas Stored in Reservoirs and Pipelines Noncurrent (117.3)		
22	Gas Owed to System Gas (117.4)		
23	Other Utility Plant (118)		
24	(Less) Accum. Prov. for Depre. and Amort. of Other Utility Plant (119)		
25	Total Utility Plant (lines 2 through 24)		
26	**OTHER PROPERTY AND INVESTMENTS**		
27	Nonutility Property (121)		
28	(Less) Accum. Prov. For Depre. And Amortization (122)		
29	Investments in Associated Companies (123)		
30	Investment in Subsidiary Companies (123.1)		
31	Noncurrent Portion of Allowances		
32	Other Investments (124)		
33	Sinking Funds (125)		
34	Depreciation Fund (126)		
35	Amortization Fund-Federal (127)		
36	Other Special Funds (128)		
37	Special Funds-Nonmajor Only (129)		
38	Long-Term Portion of Derivatives Assets		
39	Long-Term Portion of Derivative Assets		
40	Total Other Property and Investments (Lines 27 through 39)		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ____(E) or ___(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

	ASSETS	Current Year End of Quarter Balance Month/Day/Year	Prior Year End of Quarter Balance Month/Day/Year
41	CURRENT AND ACCRUED ASSETS		
42	Cash and Working Funds (Nonmajor Only) (130)		
43	Cash (131)		
44	Special Deposits (132-134)		
45	Working Fund (135)		
46	Temporary Cash Investments (136)		
47	Notes Receivable (141)		
48	Customer Accounts Receivable (142)		
49	Other Accounts Receivable (143)		
50	(Less)Accum.Prov. For Uncollectible Accts.Cr (144)		
51	Notes Receivable from Associated Companies (145)		
52	Accounts Receivable from Assoc. Companies (146)		
53	Fuel Stock (151)		
54	Fuel Stock Expenses Undistributed (152)		
55	Residuals (Elec) and Extracted Products (153)		
56	Plant Materials and Operating Supplies (154)		
57	Merchandise (155)		
58	Other Material and Supplies (156)		
59	Nuclear Materials held for Sale (157)		
60	Allowances (158.1 and 158.2)		
61	(Less) Noncurrent Portion of Allowances		
62	Stores Expenses Undistributed (163)		
63	Gas Stored Underground-Current (164.1)		
64	LNG Stored and Held for Processing (164.2-164.3)		
65	Prepayments (165)		
66	Advances for Gas (166-167)		
67	Interest and Dividends Receivable (171)		
68	Rents Receivable (172)		
69	Accrued Utility Revenues (173)		
70	Miscellaneous Current and Accrued Assets (174)		
71	Derivative Instrument Assets (175)		
72	(Less) Long-Term Portion of Derivative Instrument		
73	Derivative Instrument Assets-Hedges (176)		
74	(Less) Long-Term Portion of Derivative Instrument		
75	Total Current and Accrued Assets (Lines 42 through 74)		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or _____(G)	____An Original ____A Resubmission	__Month/Day/Year__	__Month/Day/Year__

COMPARATIVE BALANCE SHEET (continued)

	ASSETS	Current Year End of Quarter Balance Month/Day/Year	Prior Year End of Quarter Balance Month/Day/Year
76	DEFERRED DEBITS		
77	Unamortized Debt Expenses (181)		
78	Extraordinary Property Losses (182.1)		
79	Unrecovered Plant and Regulatory Study Costs (182.2)		
80	Other Regulatory Assets (182.3)		
81	Preliminary Survey and Investigation Charges (183)		
82	Preliminary Natural Gas Survey and Investigation Charges (183.1)		
83	Other Preliminary Survey and Investigation Charges (183.2)		
84	Clearing Accounts (184)		
85	Temporary Facilities (185)		
86	Miscellaneous Deferred Debits (186)		
87	Deferred Losses from Disposition of Utility Plant (187)		
88	Research, Development and Demonstration Expenditures (188)		
89	Unamortized Loss on Reacquired Debt (189)		
90	Accumulated Deferred Income Taxes (190)		
91	Unrecovered Purchase Gas Costs (191)		
92	Total Deferred Debits (lines 77 through 91)		
93	TOTAL ASSETS (lines 25,40, 75 and 92)		

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ___(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

	LIABILITIES AND SHAREHOLDER EQUITY	Current Year End of Quarter Balance Month/Day/Year	Prior Year End of Quarter Balance Month/Day/Year
1	PROPRIETARY CAPITAL		
2	Common Stock Issued (201)		
3	Preferred Stock Issued (204)		
4	Capital Stocked Subscribed (202,205)		
5	Stock Liability for Conversion (203,206)		
6	Premium on Capital Stock (207)		
7	Other Paid-In Capital (208-211)		
8	Installments Received on Capital Stock (212)		
9	(Less) Discount on Capital Stock (213)		
10	(Less) Capital Stock Expense (214)		
11	Retained Earnings (215, 215.1, 216)		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)		
13	(Less) Reacquired Capital Stock (217)		
14	Noncorporate Proprietorship (Nonmajor only)(218)		
15	Accumulated Other Comprehensive Income (219)		
16	Total Proprietary Capital (lines 2 through 15)		
17	LONG-TERM DEBT		
18	Bonds (221)		
19	(Less) Reacquired Bonds (222)		
20	Advances from Associated Companies (223)		
21	Other Long-term Debt (224)		
22	Unamortized Premium on Long-Term Debt (225)		
23	(Less) Unamortized Discount on Long-Term Debt (226)		
24	(Less) Current Portion of Long-Term Debt		
25	Total Long-Term Debt (lines 18 through 24)		
26	OTHER NONCURRENT LIABILITIES		
27	Obligations Under Capital Leases - Noncurrent (227)		
28	Accum. Prov. for Property Insurance (228.1)		
29	Accum. Prov. for Injuries and Damages (228.2)		
30	Accum. Prov. for Pensions and Benefits (228.3)		
31	Accum. Miscellaneous Operating Provisions (228.4)		
32	Accumulated Provision for Rate Refunds (229)		
33	Long-Term Portion of Derivative Instrument Liabilities		
34	Long-Term Portion of Derivative Instrument Liabilities-Hedges		
35	Asset Retirement Obligations (230)		
36	Total Other Noncurrent Liabilities (lines 27 through 35)		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____(E) or ____(G)	_____An Original _____A Resubmission	Month/Day/Year	Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

	LIABILITIES AND SHAREHOLDER EQUITY	Current Year End of Quarter Balance Month/Day/Year	Prior Year End of Quarter Balance Month/Day/Year
37	CURRENT AND ACCRUED LIABILITIES		
38	Current Portion of Long-Term Debt		
39	Notes Payable (231)		
40	Accounts Payable (232)		
41	Notes Payable to Associated Companies (233)		
42	Accounts Payable to Associated Companies (234)		
43	Customer Deposits (235)		
44	Taxes Accrued (236)		
45	Interest Accrued (237)		
46	Dividends Declared (238)		
47	Matured Long-Term Debt (239)		
48	Matured Interest (240)		
49	Tax Collections Payable (241)		
50	Miscellaneous Current and Accrued Liabilities (242)		
51	Obligations under Capital Leases - Current (243)		
52	Derivative Instrument Liabilities (244)		
53	(Less) Long-Term Portion of Derivative Instrument Liabilities		
54	Derivative Instrument Liabilities-Hedges (245)		
55	(Less) Long-Term Portion of Derivative Instrument Liabilities-Hedges		
56	Total Current and Accrued Liabilities (lines 38 through 55)		
57	DEFERRED CREDITS		
58	Customer Advances for Construction (252)		
59	Accumulated Deferred Investment Tax Credits (255)		
60	Deferred Gains from Disposition of Utility Plant (256)		
61	Other Deferred Credits (253)		
62	Other Regulatory Liabilities (254)		
63	Unamortized Gain on Reacquired Debt (257)		
64	Accum. Deferred Income Taxes-Accel. Amort.(281)		
65	Accum. Deferred Income Taxes-Other Property (282)		
66	Accum. Deferred Income Taxes-Other (283)		
67	Total Deferred Credits (lines 58 through 66)		
68	TOTAL LIABILITIES AND STOCKHOLDER EQUITY (lines 16,25,36,56 and 67)		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ____(E) or ____(G)	_____An Original _____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS

1. Enter in column (b) the balance for the reporting quarter and in column (c) the balance for the same three month period for the prior year.
2. Enter in column (d) the year to date balance for the year, and in column (e) the year to date balance for the same period of the prior year.
3. Report in column (f) the quarter to date amounts for electric utility function; in column (g) the quarter to date amounts for gas utility, and in (h) the quarter to date amounts for other utility function.

	(a)	Three Months Ended (Month/Day/Year) (b)	Three Months Ended (Month/Day/Year) (c)
1	UTILITY OPERATING INCOME		
2	Operating Revenues (400)		
3	OPERATING EXPENSES		
4	Operating Expenses (401)		
5	Maintenance Expense (402)		
6	Depreciation Expense (403)		
7	Depreciation of Asset Retirement Costs (403.1)		
8	Amortization and Depletion of Plant (404-405)		
9	Amortization of Utility Plant Acq. Adj. (406)		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)		
11	Amort. of Conversion Expenses (407.2)		
12	Regulatory Debits (407.3)		
13	(Less) Regulatory Credits (407.4)		
14	Taxes Other Than Income Taxes (408.1)		
15	Income Taxes-Federal (409.1)		
16	Income Taxes-Other (409.1)		
17	Prov. for Def. Income Taxes (410.1)		
18	(Less) Def. Income Taxes-Cr.(411.1)		
19	ITC Adjustment Net (411.4)		
20	(Less) Gains From Disposition of Utility Plant (411.6)		
21	Losses From Disposition of Utility Plant (411.7)		
22	(Less) Gains From Disposition of Allowances (411.8)		
23	Losses From Disposition of Allowances (411.9)		
24	Accretion Expense (411.10)		
25	Revenues From Plant Leased to Others (412)		
26	Expenses of Plant Leased to Others (413)		
27	Net Utility Operating Income (Lines 2 through 26)		

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Appendix A: Form 3-Q and 6-Q Samples.

STATEMENT OF INCOME AND RETAINED EARNINGS (page 2)

	Current Year to Date Balance (Month/Day/Year) (d)	Prior Year to Date Balance (Month/Day/Year) (e)	ELECTRIC FUNCTION Current Year to Date (Month/Day/Year) (f)	GAS FUNCTION Current Year to Date (Month/Day/Year) (g)	OTHER UTILITY Current Year to Date (Month/Day/Year) (h)
1					
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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____(E) or _____(G)	_____An Original _____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

	(a)	Three Months Ended (Month/Day/Year) (b)	Three Months Ended (Month/Day/Year) (c)	Current Year to Date Balance (Month/Day/Year) (d)	Prior Year to Date Balance (Month/Day/Year) (e)
28	Net Utility Operating Income				
29	**OTHER INCOME AND DEDUCTIONS**				
30	**OTHER INCOME**				
31	**NONUTILITY OPERATING INCOME**				
32	Rev. From Contract Work (415)				
33	(Less) Exp. of Contract Work (416)				
34	Rev. From Nonutility Oper. (417)				
35	(Less) Expenses of Nonutility Operations (417.1)				
36	Nonoperating Rental Income (418)				
37	Equity in Earnings of Subs (418.1)				
38	Interest and Dividend Income (419)				
39	AFUDC (419.1)				
40	Misc. Nonoperating Income (421)				
41	Gain on Disp. of Property (421.1)				
42	Total Other Income (lines 32-41)				
43	**OTHER INCOME DEDUCTIONS**				
44	Loss on Disp. of Property (421.2)				
45	Misc. Amortization (425)				
46	Donations (426.1)				
47	Life Insurance (426.2)				
48	Penalties (426.3)				
49	Expenditures for Certain Civic, Political and Related Activities (426.4)				
50	Other Deductions (426.5)				
51	Total Other Income Deductions (lines 44 through 50)				

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or _____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

	(a)	Three Months Ended (Month/Day/Year) (b)	Three Months Ended (Month/Day/Year) (c)	Current Year to Date Balance (Month/Day/Year) (d)	Prior Year to Date Balance (Month/Day/Year) (e)
52	**TAXES APPLICABLE TO OTHER INCOME AND DEDUCTIONS**				
53	Taxes Other than Income Taxes (408.2)				
54	Income Taxes -Federal (409.2)				
56	Income Taxes-Other (409.2)				
56	Provision for Deferred Income Taxes (410.2)				
57	(Less) Provision for Deferred Income Taxes-Cr. (411.2)				
58	Investment Tax Credit Adj-Net (411.5)				
59	Investment Tax Credits (420)				
60	Total Taxes on Other Income and Deductions (Lines 53 through 59)				
61	Net Other Income and Deductions (total lines 42,51 and 60)				
62	**INTEREST CHARGES**				
63	Interest on Long-Term Debt (427)				
64	Amort. of Debt Discount (428)				
66	Amort of Loss on Reacquired Debt (428.1)				
66	(Less) Amort of Premium on Debt-Credit (429)				
67	(Less) Amort of Gain on Reacquired (429.1)				
68	Interest on Debt to Associated Companies (430)				
69	Other Interest Expense (431)				
70	Allowance for Borrowed Funds Used During Construction-Cr. (432)				
71	Net Interest Charges (Lines 63 through 70)				
72	Income Before Extraordinary Items (lines 28, 61, and 71)				

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____An Original		
_____(E) or _____(G)	____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

	Item (a)	Three Months Ended (Month/Day/Year) (b)	Three Months Ended (Month/Day/Year) (c)	Current Year to Date Balance (Month/Day/Year) (d)	Prior Year to Date Balance (Month/Day/Year) (e)
74	**EXTRAORDINARY ITEMS**				
75	Extraordinary Income (434)				
76	(Less) Extraordinary Deductions (435)				
77	Net Extraordinary Items (Line 75 less 76)				
78	Income Taxes -Federal and other (409.3)				
79	Extraordinary Items After Tax (Line 77 less 78)				
80	NET INCOME (line 72 and 79)				
81					
82	**RETAINED EARNINGS**				
83	Unappropriated Retained Earnings				
84	Beginning Balance (Account 216)				
85	Adjustments to Retained Earnings (Account 439)				
86	Balance Transferred from Income (Account 433 less 418.1)				
87	Appropriations of Retained Earnings (Account 436)				
88	Dividends Declared - Preferred Stock (437)				
89	Dividends Declared-Common Stock (Account 438)				
90	Transfers From Account 216.1				
91	Unappropriated Retained Earnings Ending Balance (216)				
92	Appropriated Retained Earnings (215)				
93	Appropriated Retained Earnings-Amortization Reserve Federal (215.1)				
94	Total Unappropriated and Appropriated Retained Earnings (lines 91, 92 and 93)				

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
_____(E) or _____(G)	____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF CASH FLOWS

(1) Codes to be used:(a) Net Proceeds or Payments;(b)Bonds, debentures and other long-term debt;(c) Include commercial paper; and (d) Identify separately such items as investments, fixed assets, intangibles, etc.

(2) Information about noncash investing and financing activities must be provided in the Notes to the Financial statements. Also provide a reconciliation between "Cash and Cash Equivalents at End of Year" with related amounts on the Balance Sheet.

(3) Operating Activities-Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show in the Notes to the Financials the amounts of interest paid (net of amount capitalized) and income taxes paid.

(4) Investing Activities: Include at Other (line 25) net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed in the Notes to the Financial Statements. Do not include on this statement the dollar amount of leases capitalized per the USofA General Instruction 20; instead provide a reconciliation of the dollar amount of leases capitalized with the plant cost.

	Description (See Instruction for Explanation of Codes). (a)	Current Year to Date Month/Day/Year (b)	Prior Year to Date Month/Day/Year (c)
1	**CASH FLOW FROM OPERATING ACTIVITIES:**		
2	Net Income		
3	Noncash Charges (Credits) to Income:		
4	Depreciation and Depletion		
5	Amortization of (specify)		
6	Deferred Income Taxes (Net)		
7	Investment Tax Credit Adjustment (Net)		
8	Net (Increase) Decrease in Receivables		
9	Net (Increase) Decrease Inventory		
10	Net (Increase) Decrease Allowances Inventory		
11	Net (Increase) Decrease Payables and Accrued Expenses		
12	Net (Increase) Decrease Other Regulatory Assets		
13	Net (Increase) Decrease Other Regulatory Liabilities		
14	(Less) Allowance for Other Funds Used During Construction		
15	(Less) Undistributed Earnings from Subsidiary Companies		
16	Other: (Provide details in footnote)		
17	Net Cash Provided by (Used in) Operating Activities (Total 2 through 16)		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
____(E) or _____(G)	____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF CASH FLOWS (continued)

	Description (See Instruction for Explanation of Codes). (a)	Current Year to Date Month/Day/Year (b)	Prior Year to Date Month/Day/Year (c)
18	**CASH FLOW FROM INVESTMENT ACTIVITIES**		
19	Construction and Acquisition of Plant (including land):		
20	Gross Additions to Utility Plant (less nuclear fuel)		
21	Gross Additions to Nuclear Fuel		
22	Gross Additions to Common Utility Plant		
23	Gross Additions to Non utility Plant		
24	(Less) Allowance for Other Funds Used During Construction		
25	Other: (provide details in footnote)		
26	Cash Outflows for Plant (Total of Lines 20 through 25)		
27	Acquisition of Other Noncurrent Assets (d)		
28	Proceeds from Disposal of Noncurrent Assets (d)		
29	Investments in and Advances to Associated and Subsidiary Companies		
30	Contributions and Advances from Associated and Subsidiary Companies		
31	Disposition of Investments in (and advances to) Associated and Subsidiary Companies		
32	Purchase of Investment Securities (a)		
33	Proceeds from Sales of Investment Securities (a)		
34	Loans Made or Purchased		
35	Collections on Loans		
36	Net (Increase) Decrease in Receivables		
37	Net (Increase) Decrease in Inventory		
38	Net (Increase) Decrease in Allowances Held for Speculation		
39	Net Increase (Increase) in Payables and Accrued Expense		
40	Other: (provide details in footnote)		
41	Net Cash Provided by (Used in) Investing Activities (lines 26 through 40)		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E)_____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF CASH FLOWS (continued)

	(a)	Current Year to Date Month/Day/Year (b)	Prior Year to Date Month/Day/Year (c)
42	CASH FLOWS FROM FINANCING ACTIVITIES:		
43	Proceeds From Issuance of:		
44	Long-Term Debt (b)		
45	Preferred Stock		
46	Common Stock		
47	Other: (provide details in footnote)		
48	Capital Contributions from Partners		
49	Net Increase in Short-Term Debt (c)		
50	Other: (provide details in footnote)		
51	Cash Provided by Outside Sources (lines 43 - 50)		
52	Payments for Retirement of:		
53	Long-Term Debt (b)		
54	Preferred Stock		
55	Common Stock		
56	Other: (provide details in footnote)		
57	Net Decrease in Short-Term Debt (c)		
58	Dividends on Preferred Stock		
59	Dividends on Common Stock		
60	Net Cash Provided by (Used in) Financing Activities (lines 51 through 59)		
61	NET (INCREASE) DECREASE IN CASH AND CASH EQUIVALENTS (lines 17, 41, and 60)		
62	CASH AND CASH EQUIVALENTS AT BEGINNING OF QUARTER		
63	CASH AND CASH EQUIVALENTS AT END OF QUARTER		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
_____(E) or _____(G)	____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns(b),(c),(d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.

2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.

3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.

	Item (a)	Unrealized Gains and Losses on Available-for-Sale Securities (b)	Minimum Pension Liability adjustment (net amount) (c)	Foreign Currency Hedges (d)	Other Adjustments (e)
1	Balance of Account 219 at Beginning of Preceding Quarter				
2	Preceding Quarter Reclassification from Account 219 to Net Income				
3	Preceding Quarter Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 219 at End of Preceding Quarter/ Beginning of Current Quarter.				
6	Current Quarter Reclassification From Account 219 to Net Income				
7	Current Quarter Changes in Fair Value				
8	Total (lines 6 and 7)				
9	Balance of Account 219 at End of Current Quarter				

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	**This Report is:**	**Date of Report**	**For the Quarter Ending**
_____	____ An Original		
_____(E) _____(G)	____A Resubmission	__Month/Day/Year__	__Month/Day/Year__

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES (continued)

	Other Cash Flow Hedges [Insert Category] (f)	Other Cash Flow Hedges [Insert Category] (g)	Totals for each category of items recorded in Account 219 (h)	Net Income (Carried Forward from Page 117, Line 72) (i)	Total Comprehensive Income (j)
1					
2					
3					
4					
5					
6					
7					
8					
9					

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ____(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

NOTES TO FINANCIAL STATEMENTS

1. Prepare the notes to the financial statements using the appropriate disclosure rules as prescribed in the Uniform System of Accountants and in accordance with current accounting principles. Use the space below for important notes regarding the Balance Sheet, Statement of Income and Retained Earnings, Statement of Cash Flows, and Statement of Other Comprehensive Income and Hedging Activities, or any other account thereof. Classify the notes according to each basic statement, providing a subheading for each statement except where a note is applicable to more than one statement.

2. Furnish particulars (details) as to any significant contingent assets or liabilities existing at end of quarter including a brief explanation of any action initiated by the Internal Revenue Service involving possible assessment of additional income taxes of material amount, or of a claim for refund of income taxes of a material amount initiated by the utility. Give also a brief explanation of any dividends in arrears on cumulative preferred stock.

3. Furnish details on the respondent's pension plans, post-retirement benefits other than pensions plans, and post-employment benefit plan as required by instruction 1,and in addition, disclose for each individual plan the period's cash contributions. Furnish details on the accounting for the plans and any changes in the method of accounting for them. Include details on the accounting for transition obligations on assets, gains or losses, the amounts deferred and the expected recovery periods. Also, disclose any current plan for trust curtailments, terminations, transfers, or reversions of assets.

4. Where Accounts 189 and 257 are not used, give an explanation, providing the rate treatment given these items. See General Instruction 17 of the Uniform System of Accounts.

5. Explain concisely any retained earnings restrictions and state the amount of retained earnings affected by such restrictions.

6. Disclose details on any significant financial changes during the reporting period to the respondent's consolidated group that directly affect the respondent's operations including sales, transfers or mergers of affiliates, investments in new partnerships, sales of facilities or the sale of ownership interests in facilities to limited partnerships, investments in related industries, major investment in facilities, acquisitions by the parent corporation(s), and distribution of capital.

7. Explain concisely unsettled rate proceeding where a contingency exists such that the company may need to refund a material amount to the utility's customers or that the utility may receive.

8. Explain concisely significant amounts of any refunds made or received during the year resulting from settlement of any rate proceeding affecting revenues received or costs incurred for power or gas purchases, and summarize the adjustments made to the balance sheet, income and expense accounts.

9. Explain concisely only those significant changes in accounting methods made during the period which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding period. Also give the approximate dollar effect of such change.

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

(a) Use the space below for management's discussion and analysis of financial condition and results of operation. The content of this schedule contains coverage of trends (favorable and unfavorable) and significant events or uncertainties in the areas of liquidity and capital resources that affect future business operations. See RM03-8-000 for further information.

(b) Make the statements explicit and precise, and number the responses in accordance with the items listed. Include the following disclosures as they apply to the respondent: (1) Regulatory accounting policies, (2) Revenue recognition, (3) Asset impairment, including goodwill and other intangible assets, (4) Environmental contingencies, (5) Litigation contingencies, (6) Defined benefit pension plans and other post-retirement benefit plans, (7) Cost capitalization policies, (8) Depreciation expense, (9) Decommissioning, (10) Asset retirement obligations, (11) Self insurance, (12) Unique ownership arrangements, (13) Guarantees and other assurances, (14) Off-balance sheet financing, (15) Related party transactions, (16) Energy trading and other related risk management, and (17) Other significant items.

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

SUMMARY OF UTILITY PLANT AND ACCUMULATED PROVISIONS FOR DEPRECIATION, AMORTIZATION AND DEPLETION

Report in column (b) the total amount for the item shown in column (a). Report in Column (c) the amount for electric function, in column (d) the amount for gas function, in column (e) other (specify), and in column (f) common function.

	Classification	TOTAL COMPANY For the Quarter Ended Month/Day/Year (b)
1	**UTILITY PLANT**	
2	In Service	
3	Plant in Service (Classified)	
4	Property Under Capital Lease	
5	Plant Purchased or Sold	
6	Completed Construction Not Classified	
7	Experimental Plant Unclassified	
8	TOTAL Utility Plant (lines 3 through 7)	
9	Leased to Others	
10	Held for Future Use	
11	Construction Work in Progress	
12	Acquisition Adjustments	
13	TOTAL Utility Plant (lines 8 through 12)	
14	Accum. Prov. for Depreciation, Amortization & Depletion	
15	Net Utility Plant (Lines 13 and 14)	
16	**DETAIL OF ACCUM. PROV. FOR DEPRE., AMORT. AND DEPLETION**	
17	IN SERVICE	
18	Depreciation	
19	Amort. and Depl. of Producing Natural Gas Land, Rights	
20	Amort. of Underground Storage Land and Land Rights	
21	Amortization of Other Utility Plant	
22	TOTAL IN SERVICE (lines 18 through 21)	
23	Leased to Others	
24	Depreciation and Depletion	
25	Amortization and Depletion	
26	TOTAL Leased to Others (lines 24 and 25)	
27	Held for Future Use	
28	Depreciation	
29	Amortization	
30	TOTAL Held for Future Use (lines 28 and 29)	
31	Abandonment of leases (Natural Gas)	
32	Amortization of Plant Acquisition Adjustment	
33	TOTAL Accum. Provision (lines 22, 26, 30, 31, and 32)	

FERC FORM NO. 3-Q (ED Month/Year)

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or _____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

SUMMARY OF UTILITY PLANT AND ACCUMULATED PROVISIONS FOR DEPRECIATION, AMORTIZATION AND DEPLETION (page 2)

Report in column (b) the total amount for the item shown in column (a). Report in Column (c) the amount for electric function, in column (d) the amount for gas function, in column (e) other (specify), and in column (f) common function.

	ELECTRIC For the Quarter Ended Month/Day/Year (c)	GAS For the Quarter Ended Month/Day/Year (d)	OTHER For the Quarter Ended Month/Day/Year (e)	COMMON For the Quarter Ended Month/Day/Year (f)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
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19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
32				
33				

FERC FORM NO. 3-Q (ED Month/Year)

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or _____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

PLANT IN SERVICE AND ACCUMULATED PROVISION FOR DEPRECIATION BY FUNCTION

1. Report below the original cost of plant in service by function. In addition to Account 101, include Account 102, and Account 106. Report in column (b) the original cost of plant in service and in column(c) the accumulated provision for depreciation by function.

	Function (a)	Plant in Service Year to Date Balance Month/Day/Year (b)	Accum. Depreciation Year to Date Balance Month/Day/Year (c)
1	**Part A: Balances Period to Date for Electric Plant In Service**		
2	Steam Production		
3	Nuclear Production		
4	Hydraulic Production-Conventional		
5	Hydraulic Production-Pumped Storage		
6	Other Production		
7	Transmission		
8	Distribution		
9	General		
10	Total (lines 2 through 9)		
11	**Part II: BALANCES AT PERIOD TO DATE GAS FOR NATURAL GAS**		
12	Productions-Manufactured Gas		
13	Production and Gathering-Natural Gas		
14	Products Extraction-Natural Gas		
15	Underground Gas Storage		
16	Other Storage Plant		
17	Base Load LNG Terminaling and Processing Plant		
18	Transmission		
19	Distribution		
20	General		
21	Total (lines 12 through 20)		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

PUBLIC UTILITY AND LICENSEES - ELECTRIC REVENUES AND MEGAWATT HOURS

1. Report below electric operating revenues for each prescribed account at end of quarter.
2. In column (b) report Megawatt hour sales through the end of quarter.

Line No.	Item (a)	Megawatt Hrs. (b)	End of Quarter Month/Day/Year (c)
1	**SALES OF ELECTRICITY**		
2	(440) Residential Sales		
3	(442) Commercial and Industrial Sales		
4	Small (or Commercial)		
5	Large (or Industrial)		
6	(444) Public Street and Highway Lighting		
7	(445) Other Sales to Public Authorities		
8	(446) Sales to Railroads and Railways		
9	(448) Interdepartmental Sales		
10	Total Sales to Ultimate Customers (lines 2 though 9)		
11	(447) Sales for Resale		
12	Total Sales of Electricity (lines 10 and 11)		
13	(Less) (449.1) Provision for Rate Refunds		
14	Total Revenues Net of Provision for Refunds (lines 12 and 13)		
15	**OTHER OPERATING REVENUES**		
16	(450) Forfeited Discounts		
17	(451) Misc Service Revenues		
18	(453) Sales of Water and Water Power		
19	(454) Rent from Electric Property		
20	(455) Interdepartmental Rents		
21	(456) Other Electric Revenues		
22	Total Other Operating Revenues (line 16 though 21)		
23	Total Electric Operating Revenues(line 14 and 22)		

FERC FORM NO. 3-Q (ED Month/Year)

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

NATURAL GAS COMPANY- GAS REVENUES AND DEKATHERMS

1. Report below natural gas revenues for each prescribed account.
2. In column (b) report the quantity of Dekatherms sold of natural gas at end of quarter.

	(a)	Dekatherms of Natural Gas (b)	End of Quarter Month/Day/Year (c)
1	**SALES**		
2	(480) Residential Sales		
3	(481) Commercial and Industrial Sales		
4	(482) Other Sales to Public Authorities		
5	(483) Sales for Resale		
6	(484) Interdepartmental Sales		
7	(485) Intra Company Transfers		
8	(487) Forfeited Discounts		
9	(488) Miscellaneous Service Revenues		
10	(489.1) Revenues From Transportation of Gas of Others Through Gathering Facilities		
11	(489.2) Revenues From Transportation of Gas of Others Through Transmission Facilities		
12	(489.3) Revenues From Transportation of Gas of Others Through Distribution Facilities		
13	(489.4) Revenues From Storing Gas of Others		
14	(490) Sales of Products Extracted From Natural Gas		
15	(491) Revenues From Natural Gas Processed By Others		
16	(492) Incidental Gasoline and Oil Sales		
17	(493) Rent From Gas Property		
18	(494) Other Gas Revenues		
19	Subtotal (lines 2 though 19)		
20	(Less) (496) Provision for Rate Refunds		
21	TOTAL (Lines 19 and 20)		

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ (E) _____ (G)	____ An Original ____ A Resubmission	Month/Day/Year	Month/Day/Year

DEPRECIATION, DEPLETION, AND AMORTIZATION OF UTILITY PLANT

1. Report the amounts of depreciation expense, asset retirement cost depreciation, depletion and amortization, except amortization of acquisition adjustments for the accounts indicated and classified according to the plant functional groups described.

	Functional Classification (a)	Depreciation Expense (403) (b)	ARO Depreciation (403.1) (c)	Amort. Charges (404-405) (d)	Total (e)
1	**Section A: ELECTRIC**				
2	Intangible Plant				
3	Steam Production Plant				
4	Nuclear Production Plant				
5	Hydraulic Production Plant - Conventional				
6	Hydraulic Production Plant - Pumped Storage				
7	Other Production Plant				
8	Transmission Plant				
9	Distribution Plant				
10	General Plant				
11	Common Plant				
12	TOTAL ELECTRIC (lines 2 though11)				
13	**Section B: NATURAL GAS**				
14	Intangible Plant				
15	Production Plant, Manufacturing Plant				
16	Production and Gathering Plant,NG				
17	Products Extraction Plant				
18	Underground Gas Storage Plant				
19	Other Storage Plant				
20	Base Load LNG Terminaling and Processing Plant				
21	Transmission Plant				
22	Distribution Plant				
23	General Plant				
24	Common Plant				
25	TOTAL GAS (lines 14 though 24)				

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ____(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

ELECTRIC PRODUCTION, OTHER POWER SUPPLY EXPENSES, TRANSMISSION AND DISTRIBUTION EXPENSES

Report Electric production, other power supply expenses, transmission and distribution expenses through the reporting period.

		End of Quarter Month/Day/Year
1	1.POWER PRODUCTION AND OTHER SUPPLY EXPENSES	
2	Steam Power Generation-Operation (500-509)	
3	Steam Power Generation-Maintenance (510-515)	
4	Total Steam Power	
5	Nuclear Power Generation-Operation (517-525)	
6	Nuclear Power Generation-Maintenance(528-532)	
7	Total Nuclear Power	
8	Hydraulic Power Generation -Operation (535-540.1)	
9	Hydraulic Power Generation-Maintenance(541-545.1)	
10	Total Hydraulic Power	
11	Other Power Generation-Operation (546-550.1)	
12	Other Power Generation-Maintenance(551-554.1)	
13	Total Other Power Generation	
14	Other Power Supply Expenses	
15	Purchased Power (555)	
16	System Control and Load Dispatching (556)	
17	Other Expenses (557)	
18	Total Other Power Supply Expenses (line 2 though 17)	
19	2. TRANSMISSION AND DISTRIBUTION EXPENSES	
20	Transmission Operating Expense (560-567.1)	
21	Transmission Maintenance Expenses (568-574)	
22	Total Transmission Operations and Maintenance Expenses (lines 20 and 21)	
23	Distribution Operation Expenses (580-589)	
24	Distribution Maintenance Expenses (590-598)	
25	Total Distribution Expenses (lines 23 and 24)	
26	Total Transmission and Distribution Expenses (lines 22 and 25)	
27	TOTAL (lines 18 and 26)	

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ _____(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

GAS PRODUCTION AND OTHER GAS SUPPLY EXPENSES

Report the amount of gas production and other gas supply expenses at the end of the quarter.

		End of Quarter Month/Day/Year
1	**PRODUCTION EXPENSES**	
2	**Manufactured Gas Production**	
3	(700-708) Steam Production-Operation and Maintenance	
4	(710-742) Manufactured Gas Production	
5	Total Manufactured Gas Production (lines 3 and 4)	
6	**Natural Gas Production and Gathering**	
7	(750-760) Operation	
8	(761-769) Maintenance	
9	Total Natural Gas Production and Gathering (lines 7 and 8)	
10	**Production Extraction**	
11	(770-783) Operation	
12	(784-791) Maintenance	
13	Total Production Extraction (lines 9 and 10)	
14	(795-798) Exploration and Development Expenses	
15	**Other Gas Supply Expenses**	
16	**Operation**	
17	(800) Natural Gas Well Head Purchases	
18	(800.1) Natural Gas Well Head Purchases, Intra company Transfers	
19	(801) Natural Gas Field Line Purchases	
20	(802) Natural Gasoline Plant Outlet Purchases	
21	(803) Natural Gas Transmission Line Purchases	
22	(804) Natural Gas City Gate Purchases	
23	(804.1) Liquefied Natural Gas Purchases	
24	(805) Other Gas Purchases	
25	(805.1)(Less) Purchase Gas Cost Adjustments	
26	Total Purchased Gas (lines 17 through 25)	
27	(806) Exchange Gas	
28	**Purchased Gas Expenses**	
29	(807.1) Well Expense-Purchased Gas	
30	(807.2) Operation of Purchased Gas Measuring Stations	
31	(807.3) Maintenance of Purchased Gas Measuring Stations	
32	(807.4) Purchased Gas Calculations Expenses	
33	(807.5) Other Purchased Gas Expenses	
34	Total Purchased Gas Expenses	
35	(808.1) Gas Withdrawn From Storage-Debt	
36	(808.2)(Less) Gas Delivered to Storage-Credit	
37	(809.1) Withdrawals of Liquefied Natural Gas for Processing-Debt	
38	(809.2)(Less) Deliveries of Natural Gas Processing-Credit	
39	**Gas Used in Utility Operation-Credit**	
40	(810) Gas Used for Compressor Station Fuel-Credit	
41	(811) Gas Used for Products Extraction-Credit	
42	(812) Gas Used for Other Utility Operations-Credit	
43	Total Gas Used in Utility Operations -Credit	
44	(813) Other Gas Supply Expenses	
45	Total Other Gas Supply Expenses	
46	Total Production Expenses	

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____(E) or ____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

NATURAL GAS STORAGE, TERMINALING, PROCESSING EXPENSES

Report the amount of natural gas storage, terminaling, processing, transmission and distribution expenses at the end of the quarter.

		End of Quarter Month/Day/Year
1	NATURAL GAS STORAGE, TERMINALING AND PROCESSING EXPENSES	
2	UNDERGROUND STORAGE EXPENSES	
3	(814-826) Operations	
4	(830-837) Maintenance	
5	Total (lines 3 and 4)	
6	OTHER STORAGE EXPENSES	
7	(840-842.3) Operations	
8	(843.1-843.9) Maintenance	
9	Total Other Storage Expenses (lines 6 and 7)	
10	Liquefied Natural Gas Terminaling and Processing	
11	(844.1-846.2) Operations	
12	(847.1-847.8) Maintenance	
13	Total Liquified Natural Gas Terminaling and Processing Total (lines 11 and 12)	
14	TRANSMISSION EXPENSES	
15	(850-860)Operation Expense	
16	(861-870)Maintenance Expenses	
17	Total Transmission Expense (lines 15 and 16)	
18	DISTRIBUTION EXPENSES	
19	(871-881)Operation Expenses	
20	(885-894)Maintenance	
21	Total Distribution Expenses (lines 19 and 20)	
22	Total (lines 5, 9, 13, 17 and 21)	

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
_____(E) or _____(G)	____A Resubmission	_Month/Day/Year_	Month/Day/Year

CUSTOMER ACCOUNTS, SERVICE, SALES, ADMINISTRATIVE AND GENERAL EXPENSES

Report the amount of customer account expenses, and administrative and general expenses at the end of the quarter.

		End of Quarter Month/Day/Year
1	(901-905) CUSTOMER ACCOUNTS EXPENSE	
2	(907-910) CUSTOMER SERVICE AND INFORMATIONAL EXPENSES	
3	(911-917) SALES EXPENSES	
4	**ADMINISTRATIVE AND GENERAL EXPENSES**	
5	**Operations**	
6	(920) Administrative and General Expenses	
7	(921) Office Supplies and Expenses	
8	(Less) (922) Administrative Expenses Transferred-Credit	
9	(923) Outside Services Employed	
10	(924) Property Insurance	
11	(925) Injuries and Damages	
12	(926) Employee Pensions and Benefits	
13	(927) Franchise Requirements	
14	(928) Regulatory Commission Expenses	
15	(929) (Less) Duplicate Charges -Cr.	
16	(930.1) General Advertising Expenses	
17	(930.2) Miscellaneous General Expenses	
18	(931) Rents	
19	Total Adm. and General Operations (lines 6 through 18)	
20	**Maintenance**	
21	(935) Maintenance of General Plant	
22	Total Administrative and General Expenses (lines 1, 2, 3, 19 and 21)	

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____(E)_____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

OTHER REGULATORY ASSETS (Account 182.3)

1. Report below the particulars (details) called for concerning other regulatory assets, including rate order docket number, if applicable.

2. Minor items (5% of the Balance in Account 182.3 at end of period, or amounts less than $50,000 which ever is less), may be grouped by classes.

	Description and Purpose of Other Regulatory Assets (a)	Balance Beginning of Quarter Month/Day/Year (b)	Debits (c)	Credits (d)	Balance End of Quarter Month/Day/Year (e)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24	Total				

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
____(E) or _____(G)	____A Resubmission	Month/Day/Year	Month/Day/Year

OTHER REGULATORY LIABILITIES (Account 254)

1. Report below the particulars (details) called for concerning other regulatory liabilities, including rate order docket number, if applicable.

2. Minor items (5% of the Balance in Account 254 at end of period, or amounts less than $50,000 which ever is less), may be grouped by classes.

	Description and Purpose of Other Regulatory Assets (a)	Balance Beginning of Quarter Month/Day/Year (b)	Debits (c)	Credits (d)	Balance End of Quarter Month/Day/Year (e)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24	Total				

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
____(E) or _____(G)	____A Resubmission	Month/Day/Year	Month/Day/Year

TRANSMISSION OF ELECTRICITY FOR OTHERS (ACCOUNT 456)

1. Report all transmission of electricity, i.e., wheeling, provided for other electric utilities, cooperatives, municipalities, other public authorities, qualifying facilities, non-traditional utility suppliers and ultimate customers.

2. Use a separate line of data for each distinct type of transmission service involving the entities listed in column (a), (b) and (c).

3. Report in column (a) the company or public authority that paid for the transmission service. Report in column (b)the company or public authority that the energy was received from and in column (c) the company or public authority that he energy was delivered to. Provide the full name of each company or public authority. Do not abbreviate or truncate name or use acronyms. Explain in a footnote any ownership interest in or affiliation the respondent has with the entities listed in columns (a), (b) or (c).

4. In column (d) enter a Statistical Classification code based on the original contractual terms and conditions of the service as follows: LFP-"Long-Term Firm Point to Point Transmission Service, OLF-for Other Long-Term Firm Transmission Service, SFP for Short-Term Firm Point to Point Transmission Reservation, NF-for non-firm transmission service, OS-for Other Transmission Service, and AD-for Out-of-Period Adjustments. Use this code for any accounting adjustments or "true-ups" for service provided in prior reporting periods. Provide an explanation in a footnote for each adjustment. See General Instruction for definitions of codes.

	Company or Public Authority (a)	Energy Received (b)	Energy Delivered (c)	Statistical Classification (d)	FERC Tariff (e)	Point of Receipt (f)	Point of Delivery (g)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
____(E) or _____(G)	____A Resubmission	Month/Day/Year	Month/Day/Year

TRANSMISSION OF ELECTRICITY FOR OTHERS (ACCOUNT 456) (continued)

5. In column (e), identify the FERC rate schedule or Tariff Number. On separate lines, list all FERC rate schedules or contracts designations under which service, as identified in column (d), is provided.

6. Report receipt and delivery locations for all single contract paths, "point-to-point" transmission service. In column (f) report the designation for the substation, or other appropriate identification for where energy was delivered as specified in the contract.

7. Report in column (h) the number of megawatts of billing demand that is specified in the firm transmission service contract. Demand reported in column (h) must be in megawatts. Footnote any demand not stated in megawatts basis and explain.

8. Report in column (i) and (j) the total megawatt hours received and delivered.

9. In column (k) through (n) report the revenue amounts as shown on bills or vouchers. In column (k) provide revenues from energy charges related to the amount of energy transferred. In column (m), provide the total revenues from all other charges on bills or vouchers rendered, including out of period adjustments. Explain in a footnote all components of the amount shown in column (m). Report in column (n) the total charge shown on bills rendered to the entity listed in column (a). If no monetary settlement was made, enter zero in column (n). Provide a footnote explaining the nature of the non-monitory settlement, including the amount and type of energy or service rendered.

10. Provide total amounts in column (i) through (n) as the last line.

11. Footnote entries and provide explanations following all required data.

Line No.	Billing Demand (h)	MWH Received (i)	MWH Delivered (j)	Demand Charges (k)	Energy Charges (l)	Other Chargers (m)	Total Revenue (n)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							

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Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
____(E) or _____(G)	____A Resubmission	___Month/Day/Year_	Month/Day/Year

TRANSMISSION OF ELECTRICITY BY OTHERS (ACCOUNT 565)

1. Report all transmission, i.e. wheeling of electricity provided by other electric utilities, cooperatives, municipalities, other public authorities, qualifying facilities, and others through the quarter reported.

2. In column (a)report each company or public authority that provided transmission service. Provide the full name of the company, abbreviate if necessary, but do not truncate mane or use acronyms. Explain in a footnote any ownership interest in or affiliation with the transmission service provider. Use additional columns as necessary to report all companies or public authorities that provided transmission service through the quarter reported.

3. In column (b) enter a Statistical Classification code based on the original contractual terms and conditions of the service as follows: FNS-Firm Network Transmission Service for Self. LFP- for Long-Term Firm Point-to-Point Transmission Reservations. SFP- for Short-Term Firm Point-to-Point Transmission Reservations, NF-for Non-Firm Transmission Service, and OS-for other transmission service. See General Instructions for definitions of statistical classifications.

4. Report in column (c) and (d) the total megawatthours received and delivered by the provider of the transmission service.

5. Report in column (e), (f) and (g) expenses as shown on bills or vouchers rendered to the respondent. In column (e) report the demand charges and in column (f) energy charges related to the amount of energy transferred. On column (g) report the total of all other charges on bills or vouchers rendered to the respondent, including any out of period adjustments. Explain in a footnote all components of the amount shown in column (g). Report in column (h) the total charge shown on bills rendered to the respondent. If no monetary settlement was made, enter zero in column (h). Provide a footnote explaining the nature of the non-monetary settlement, including the amount and type of energy or service rendered.

6. Enter "TOTAL" in column (a) as the last line.

7. Footnote entries and provide explanations following all required data.

	Name of Company or Public Authority (a)	Stat. Class (b)	Megawatt hours Received (c)	Megawatt hours Delivered (d)	Demand Charges (e)	Energy Charges (f)	Other Charges (g)	Total (h)
1								
2								
3								
4								
5								
6								
7								
8								

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original		
____(E) or _____(G)	____A Resubmission	Month/Day/Year	Month/Day/Year

MONTHLY PEAK LOADS AND ENERGY OUTPUT

(1) Report the monthly peak load and energy output. If the respondent has two or more power systems which are not physically integrated, furnish the required information for each non-integrated system.

(2) Report on line 2 by month the system's output for each month.

(3) Report on line 3 by month the non-requirements sales for resale. Include in the monthly amounts any energy losses associated with the sales.

(4) Report on line 4 by month the system's monthly maximum megawatt load (60 minute integration) associated with the system.

(5) Report on lines 5 and 6 the specified information for each monthly peak load reported on line 4.

Line No	(a)	Month/Year (b)	Month/Year (c)	Month/Year (d)	Total for Quarter (d)
1	**MONTHLY PEAK LOADS AND ENERGY OUTPUT**				
2	Total Monthly Energy				
3	Monthly Non-Requirements Sales for Resale				
4	Monthly Peak MW				
5	Day of Month Peak				
6	Hour of Monthly Peak				

FERC FORM NO. 3-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Form 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____ ____(E) or _____(G)	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

MONTHLY TRANSMISSION SYSTEM PEAK LOAD

(1) Report the monthly peak load on the respondent's transmission system. If the respondent has two or more power systems which are not physically integrated, furnish the required information for each non-integrated system.
(2) Report on line 2 by month the transmission system's peak load.
(3) Report on lines 3 and 4 the specified information for each monthly transmission-system peak load reported on line 2.
(4) Report on lines 4 through 11 by month the system' monthly maximum megawatt load by statistical classifications. See General Instruction for the definition of each statistical classification.

	(a)	Month/Year (b)	Month/Year (c)	Month/Year (d)	Total for Quarter (e)
1	**MONTHLY TRANSMISSION SYSTEM PEAK LOADS**				
2	Monthly Peak MW-Total				
3	Day of Monthly Peak				
4	Hour of Monthly Peak				
5	Firm Network Service - For Self				
6	Firm Network Service - For Others				
7	Long-Term Firm Point-to-Point Reservations				
8	Other Long-Term Firm Service				
9	Short-Term Firm Point-to-Point Reservation				
10	Non-Firm Service				
11	Other Service				

Docket No. RM03-8-000
Appendix A: Forms 3-Q and 6-Q Samples.

Form Approved
OMB No. _____
Expires (Month/Day/Year)

THIS FILING IS A
___ An Initial (Original) Application or
___ Resubmission No.____

FERC FORM No. 6-Q: QUARTERLY FINANCIAL REPORT OF OIL PIPELINE COMPANIES

This report is mandatory under the Interstate Commerce Act, Section 20, and 18 CFR 357.400. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy Regulatory Commission does not consider this report to be of a confidential nature.

Exact Legal Name of Respondent (Company)	For The Quarter Ending
_____	_____ Month/Day/Year _____

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Appendix A: Forms 3-Q and 6-Q Samples.

LIST OF SCHEDULES

Enter in column (c) the terms 'none", "not applicable" as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none" or "not applicable".

Line No.	Title of Schedule	Page No.	Remarks
1	General Information	3	
2	Excerpts from Law and General Penalties	4	
3	General Instructions	5-7	
4	Identification	8	
5	Officer(s) Certification	9	
6	Important Changes During the Quarter	10	
7	Comparative Balance Sheet	11-13	
8	Statement of Income and Retained Earnings	14-16	
9	Statement of Cash Flows	17-19	
10	Statement of Accumulated Comprehensive Income and Hedging Activities	20-21	
11	Notes to the Financial Statements	22	
12	Management Discussion and Analysis	23	
13	Operating Revenues	24	
14	Operation, Maintenance and General Expenses	25-26	
15	Statistics of Operation	27-28	

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Appendix A: Forms 3-Q and 6-Q Samples.

I. Purpose

This form is a regulatory support requirement under 18 CFR 357.400. It is designed to collect financial and operational informational from oil pipeline companies subject to the jurisdiction of the Federal Energy Regulatory Commission. This report is also considered to be a nonconfidential public use form.

II. Who Must File

(a) Each oil pipeline company, subject to the provisions of Section 20 of the Interstate Commerce Act, and having jurisdictional operating revenues of $500,000 or more in each of the three immediately preceding calendar years, must submit this form.

III. What and Where to Submit

(a) Submit this form electronically through the Form 6-Q Submission Software. Retain one copy of this report for your files.

(b) Respondents may submit the Officer(s) Certification electronically or file a signed original Officer Certification to:

Chief Accountant
888 First Street N.E.
Washington, DC 20426

(c) If the financial statements contained in this report are reviewed by a Certified Public Accountant, the CPA review letter must accompany this report. The financial statements are the Comparative Balance Sheet, Statement of Income and Retained Earnings, the Statement of Cash Flows, and the Statement of Accumulated Comprehensive Income and Hedging Activities, along with the related notes to these statements. Please mail one copy of the CPA review letter to:

Chief Accountant
888 First Street N.E.
Washington, DC 20426

IV. When to Submit

(a) Submit this report form according the filing dates contained in sections 18 CFR 357.400 of the Commission's regulations.

V. Where to Send Comments on Public Reporting Burden

(a) The public reporting burden for this collection of information is estimated to average [insert hours] per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426 (Attention: Michael Miller, ED-30); and to the Office of Information and Regulatory Affairs, Office of the Management and Budget, Washington, DC 20503 (Attention :Desk Officer for the Federal Energy Regulatory Commission).

(b) You shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Docket No. RM03-8-000
Appendix A: Forms 3-Q and 6-Q Samples.

EXCERPTS FROM THE LAW

Interstate Commerce Act, Part 1

Section 20

(1) The Commission is hereby authorized to require annual, periodic, or special reports from carriers, lessors, ***(as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, lessors, ***specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classify such carriers, lessors, ***as it may deem proper for any of these purposes.

General Penalties

Section 20

(7)(b) Any person who shall knowingly and willfully make, cause to be made, or participate in the making of any false entry in any annual or other report required under this section to be filed, ***or shall knowingly or willfully file with the Commission any false report, or other document, shall be deemed guilty of an misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment:***

(7)(c) Any carrier or lessor, or any officer, agent, employee, or representative thereof, who shall fail to make and file an annual or other report with the Commission within the time fixed by the Commission, or to make specific and full true and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.

FERC FORM 6-Q (ED Month/Year)

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Appendix A: Forms 3-Q and 6-Q Samples.

GENERAL INSTRUCTIONS

I. Prepare this report in conformity with the Uniform System of Accounts (18 CFR 352). Interpret all accounting words and phrases in accordance with the Uniform System of Accounts.

II. Enter in dollar amounts in whole numbers.

III. Complete each question fully and accurately, even if it has been answered in a previous quarterly report. Enter the word "None" where it truly and completely states the fact.

IV. Enter the month, day, and year for all dates. Use customary abbreviations. The "Date of Report" included in the header of each page is to be completed only for resubmissions. The date of the resubmission must be reported in the header for all form pages, whether or not they are changed from the previous filing.

V. For any resubmissions, submit the filing using the Form 6 - Q Submission Software.

VI. Generally, except for certain schedules, all numbers, whether they are expected to be debits or credits, must be reported in the positive. Numbers having a sign that is different from the expected sign must be reported by enclosing the numbers in parentheses.

VII. For the Management's Discussion and Analysis of Financial Condition and Results of Operation schedule, provide a forward-looking discussion of the assessment of the probable future impacts of specific identified significant current events and future events on the respondent's operations and financial position. Specifically address the following details as they apply to the respondent.

(1) Regulatory accounting policies - provide a description of the impact of competition, the changing regulatory framework in which the respondent operates, and an assessment of the impact should a change in a critical accounting policy occur.

(2) Revenue recognition - provide a description of the possible impacts associated regulation for revenue recognition, along with a description of the revenue accounting model used and the major assumptions associated with the model. In addition, provided a description of the probable future impacts associated with a change in the revenue accounting model used.

(3) Asset impairment, including goodwill and other intangible assets - provide a description of the possible impacts of variations in assumptions used for these measurements, and provide a description of the possible future impacts should a change in a major assumption occur.

(4) Environmental contingencies - provide a description of the possible future impacts associated with environmental regulations including a description of possible capital expenditures associated with such regulations, and the impact on the respondent's financial position.

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Appendix A: Forms 3-Q and 6-Q Samples.

GENERAL INSTRUCTIONS

(5) Litigation contingencies - provide a description of the possible future impacts associated with potential litigation or other unresolved litigation including a description of possible capital expenditures associated with such litigation contingencies and the impact on the respondent's financial position.

(6) Defined benefit pension plans and other post-retirement benefit plans - provide a description of the possible future impacts regarding potential changes as they relate to liquidity, capital resources, and the methods used to fund plans.

(7) Cost capitalization policies - provide a description of possible impacts on the respondent's operations, financial position, and cash flow as it relates to magnitude of the cost associated with construction, retirement and replacement of plant property and equipment. Specifically address the possible future impact on earnings trends and liquidity.

(8) Depreciation expense - provide a description of the possible future impact of a change in the significant assumptions used to estimate depreciation expense. Additionally, describe any differences in recovery of depreciation expense due to rate setting bodies accelerating the recovery of certain assets that may have risk of becoming stranded costs.

(9) Decommissioning - provide a description of the possible future impacts of a change in the basis of estimation and factors which may result in a change in estimates, and provide a description of the impact of such a change occurring would have on the respondent's operations and financial position.

(10) Asset retirement obligations - provide a description of the possible future impacts associated with a change in the major assumptions, strategies for asset retirement obligations and provide a description of factors that may result in changes in estimates.

(11) Self insurance - provide a description the possible future impacts associated with exposure to uninsured risks including a description of the financial requirements associated with a potential loss. Include a description the amount of coverage where there is a significant discrepancy between insurance coverage by similar companies within the same industry. Also, provide a description of risk sharing agreements with others including the amount of exposure, funding requirements of the exposure, and the potential impact on the respondent's operations due to such exposure.

(12) Unique ownership arrangements - provide a description of the possible future impacts on the company's operations and financial position of potential changes in unique ownership agreements. The description will include earnings and loss allocations, buy-out agreements, and other significant management items related to the unique ownership agreement.

(13) Guarantees and other assurances - provide a description of the potential impact of guarantees and other assurances on the respondent's operations and financial position. Include a description the economic impact of significant contractual obligations along with the probability of an event occurring that would trigger the guarantee. Include a description of the potential impact of the respondent's liquidity and it's capital resources.

(14) Off-balance sheet financing - provide a description and explanation of the possible future impacts on the company's financial position and operations regarding off-balance sheet financing obligations. Include a description of the assets involved, the potential effects of termination agreements, and the amounts of purchase or sale agreements between the company and the off-balance sheet entity.

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Appendix A: Forms 3-Q and 6-Q Samples.

GENERAL INSTRUCTIONS

(15) Related party transactions - provide a description of the possible effects on the respondent's financial condition and operations associated with related party transactions. Provide a description of the purpose of the arrangement, parties involved, determination of transaction prices and actual transaction prices, and any ongoing contractual arrangements along with the potential impact on the respondent's operations associated with such transactions.

(16) Energy trading and other related risk management - provide a description of the potential impact on the respondent's financial operations associated with potential changes in fair value due to valuation techniques and disclose maturities of contracts less than one year, between one and three years, between four and five years, and maturities exceeding five years. Additionally disclose the impact of obligations regarding trading risks and credit quality, impacts of risks associated with market fluctuations, and impacts of risks associated with linked or indexed assets or liabilities.

(17) Other significant items - provide a description of other probable future events that could potentially impact the respondent's operations and financial position.

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____ A Resubmission	Month/Day/Year	Month/Day/Year

IDENTIFICATION

	Item
1	Exact Legal Name of Respondent _____
2	Previous Name and Date of Change (If name changed during the period) _____
3	Address of Principal Office at End of Period _____ _____
4	Name of Contact Person _____
5	Title of Contact Person _____
7	Address of Contact Person (Street, City, State, Zip Code) _____ _____
8	Telephone of Contact Person, (Including Area Code) _____

FERC FORM 6-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____ A Resubmission	Month/Day/Year	Month/Day/Year

OFFICER CERTIFICATION

(1) I have reviewed this FERC Form No. 6-Q, Quarterly Financial Report.

(2) Based on my knowledge this report does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report.

(3) Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly represent in all material respects the financial condition, results of operations and cash flows of the respondent as of, and for the periods presented in this quarterly report.

(4) I am responsible for establishing and maintaining internal controls and have designed such internal controls to ensure that material information relating to the respondent and its subsidiaries is made known to such officers by others within those entities, particular during the period in which the periodic reports are being presented. I have evaluated the effectiveness of the respondent's internal controls as of a data within 90 days prior to the report, and have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date.

(5) I have disclosed to the respondent's auditors and the audit committee of the board of directors and the audit committee of the board of directors (or persons fulfilling the equivalent function)that all significant deficiencies in the design or operation of internal controls which could adversely affect the respondent's ability to record, process, summarize and report financial data and have identified for the respondent's auditors any material weaknesses in internal controls; and any fraud, whether or not material, that involves management or other employees who have a significant role in the respondent's internal controls.

(6). I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Line No.	Name(s) of Certifying Officials	Title	Date
1			
2			
3			
4			

Title 18, U.S.C. 1001 makes it a crime for any person to knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

FERC FORM 6-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	_Month/Day/Year_	_Month/Day/Year_

IMPORTANT CHANGES DURING THE QUARTER

Give particulars (details) concerning the matters indicated below. Make the statements explicit and precise, and number these in accordance with the inquires. Each inquiry should be answered. Enter "none" or "not applicable" where applicable. If information which answers an inquiry is given elsewhere in the report, make a reference to the schedule in which it appears.

(1) Changes and important additions to franchise rights: Describe the actual consideration given therefor and state from whom the franchise rights were acquired. State if no consideration was given.

(2) Acquisition of ownership in other carrier operations by reorganization, merger, or consolidation with other companies: Give names of companies involved, particulars concerning the transactions, and reference to dates of Commission authorization and journal entries filed if applicable.

(3) Important extension or reduction of carrier pipeline operations: State territory added or relinquished and date operations began or ceased and give reference to Commission authorization, if any was required.

(4) State briefly the status of any materially important legal proceedings pending at the end of the year, and the results of any such proceedings culminated during the period.

Docket No. RM03-8-000
Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	_Month/Day/Year_	__Month/Day/Year__

COMPARATIVE BALANCE SHEET

		Current Year End of Quarter Balance Month/Day/Year	Prior Year End of Quarter Balance Month/Day/Year
1	**CURRENT ASSETS**		
2	Cash (10)		
3	Special Deposits (10-5)		
4	Temporary Investments (11)		
5	Notes Receivable (12)		
6	Receivables From Affiliated Companies (13)		
7	Accounts Receivable (14)		
8	Accumulated Provision For Uncollectible Accounts (14-5)		
9	Interest and Dividends Receivable (15)		
10	Oil Inventory (16)		
11	Material and Supplies (17)		
12	Prepayment (18)		
13	Other Current Assets (19)		
14	Deferred Income Tax Assets (19-5)		
15	TOTAL Current Assets (lines 2 through 14)		
16	**INVESTMENTS AND SPECIAL FUNDS**		
17	Investments in Affiliated Companies (20)		
18	Stocks		
19	Bonds		
20	Other Secured Obligations		
21	Unsecured Notes		
22	Investment Advances		
23	Undistributed Earnings From Certain Invest in Account 20		
24	Other Investments (21)		
25	Stocks		
26	Bonds		
27	Other Secured Obligations		
28	Unsecured Notes		
29	Investment Advances		
30	Sinking and Other Funds (22)		
31	Total Investment and Special Funds (lines 17 through 30)		

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

		Current Year End of Quarter Balance (Month/Day/Year	Prior Year End of Quarter Balance Month/Day/Year
32	**TANGIBLE PROPERTY**		
33	Carrier Property (30)		
34	(Less) Accrued Depreciation -Carrier Property (31)		
35	(Less) Accrued Amortization-Carrier Property (32)		
36	Net Carrier Property (Line 33 Less lines 34 and 35)		
37	Operating Oil Supply (33)		
38	Non Carrier Property (34)		
39	(Less) Accrued Depreciation-Noncarrier Property		
40	Net Non Carrier Property (line 38 less 39)		
41	Total Tangible Property (lines 36, 37 and 40)		
42	**OTHER ASSETS AND DEFERRED CHARGES**		
43	Organization Costs and Other Intangibles (41)		
44	(Less) Accrued Amortization of Intangibles (41)		
45	Miscellaneous Other Assets (43)		
46	Other Deferred Charges (44)		
47	Accumulated Deferred Income Tax Assets (45)		
48	Derivative Instrument Assets (46)		
49	Derivative Instrument Assets-Hedges (47)		
50	Total Other Assets and Deferred Charges (lines 43 through 49)		
51	TOTAL ASSETS (lines 15, 31, 41, and 50)		

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____ A Resubmission	Month/Day/Year	Month/Day/Year

COMPARATIVE BALANCE SHEET (continued)

		Current Year End of Quarter Balance (Month/Day/Year)	Prior Year End of Quarter Balance (Month/Day/Year)
1	**CURRENT LIABILITIES**		
2	Notes Payable (50)		
3	Payables to Affiliated Companies (51)		
4	Accounts Payable (52)		
5	Salaries and Wages Payable (53)		
6	Interest Payable (55)		
7	Taxes Payable (56)		
8	Long-Term Debt-Payable within one year (57)		
9	Other Current Liabilities (58)		
10	Deferred Income Tax Liabilities (59)		
11	Total Current Liabilities (lines 2 through 10)		
12	**NONCURRENT LIABILITIES**		
13	Long-Term Debt -Payable after one year (60)		
14	Unamortized Premium on Long-Term Debt-Dr (62)		
15	Other Noncurrent Liabilities (63)		
16	Accumulated Deferred Income Tax Liabilities (64)		
17	Total Noncurrent Liabilities (lines 13 through 16)		
18	Total Liabilities (lines 11 and 17)		
19	**STOCKHOLDERS' EQUITY**		
20	Capital Stock (70)		
21	Premiums on Capital Stock (71)		
22	Capital Stock Subscriptions (72)		
23	Additional Paid-In Capital (73)		
24	Appropriated Retained Income (74)		
25	Unappropriated Retained Income (75)		
26	(Less) Treasury Stock (76)		
27	Accumulated Other Comprehensive Income (77)		
28	Total Stockholders Equity (lines 20 through 27)		
29	TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY (lines 18 and 28)		

FERC FORM 6-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	_____An Original _____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS

1. Enter in column (b) the balance for the reporting quarter and enter in column (c) the balance for the same three month period for the prior year.

2. Enter in column (d) the year to date balance for the year, and enter in column (e) the year to date balance for the same period of the prior year.

	(a)	Current Year Current Quarter (Month/Day/Year) (b)	Prior Year Prior Quarter (Month/Day/Year) (c)	Current Year to Date Quarter (Month/Day/Year) (d)	Prior Year to Date Quarter (Month/Day/Year) (e)
1	ORDINARY ITEMS-Carrier Operating				
2	Operating Revenues (600)				
3	(Less) Operating Expenses (610)				
4	Net Carrier Operating Income				
5	Other Income and Deductions				
6	Income (Net) From Noncarrier Property (602)				
7	Interest and Dividend Income (630)				
8	Miscellaneous Income (640)				
9	Unusual or Infrequent Items-Cr.(645)				
10	(Less)Interest Expense (650)				
11	(less) Misc. Income Charges (660)				
12	(Less)Unusual or Infrequent Items Debt (665)				
13	Dividend Income (Equity				
14	Undistributed Earnings (Losses)				
15	Equity In Earnings (Losses) of Affiliated Companies (lines 13 and				
16	Total Other Income and Deductions				
17	Ordinary Income Before Federal Income Taxes (line 4 (+/-) line 16)				
18	(Less) Income Taxes on Income from Continuing Operations (670)				
19	(Less) Prov. for Deferred Taxes Losses (671)				
20	Income (Loss) From Continuing Operations (lines 17 through 19)				

FERC FORM 6-Q (ED Month/Year)

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	_____An Original _____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

		Current Year Current Quarter (Month/Day/Year) (b)	Prior Year Prior Quarter (Month/Day/Year) (c)	Current Year to Date Quarter (Month/Day/Year) (d)	Prior Year to Date Quarter (Month/Day/Year) (e)
21	**Discontinued Operations**				
22	Income (Loss) from Operations of Discontinued Segments (675) (Less applicable income taxes)				
23	Gain (Loss) on Disposal of Discontinued Segments (676)				
24	Total Income (Loss) from Discontinued Operations (lines 22 and 23)				
25	Total Income (Loss) before Extraordinary Items (lines 20 and 23)				
26	EXTRAORDINARY ITEMS AND ACCOUNTING CHANGES				
27	Extraordinary Items-Net-(Debt) Credit (680)				
28	Income Taxes on Extraordinary Items -Debit (Credit) (695)				
29	Provision for Deferred Taxes-Extraordinary Items (696)				
30	Total Extraordinary Items (lines 27 through 29)				
31	Cumulative Effect of Changes in Accounting Principles -Net of taxes(697)				
32	Total Extraordinary Items and Accounting Changes				
33	Net Income (Loss) (Lines 25 and 28)				

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Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	_____An Original _____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF INCOME AND RETAINED EARNINGS (continued)

	(a)	Current Year Current Quarter (Month/Day/Year) (b)	Prior Year Prior Quarter (Month/Day/Year) (c)	Current Year to Date Quarter (Month/Day/Year) (d)	Prior Year to Date Quarter (Month/Day Year) (e)
34	UNAPPROPRIATED RETAINED INCOME				
35	Balance at Beginning of Period				
36	CREDITS				
37	Net Balance Transferred From Income (700)				
38	Prior Period Adjustments to Beginning Retained Income (705)				
39	Other Credits (710)				
40	TOTAL (lines 34 through 39)				
41	DEBITS				
42	Net Balance Transferred From Income (700)				
43	Other Debits (720)				
44	Appropriations of Retained Income (740)				
45	Dividend Appropriations of Retained Income (750)				
46	TOTAL (lines 42 Through 45)				
47	Net Increase (Decrease) During the period (line 40 minus 46)				
48	Balances at End of Year (line 35 and 47)				
49	Balance From Line 57				
50	TOTAL Unappr.Retained Income and Equity in Undistr. Earnings				
51	Account 710				
52	Account 720				
53	EQUITY IN UNDISTRIBUTED EARNINGS (LOSSES) OF AFFILIATED COMPANIES				
54	Balances at Beginning of Period				
55	Balance Transferred From Income				
56	Other Credits (debits)				
57	Balance at End of Period				

FERC FORM 6-Q (ED Month/Year)

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF CASH FLOWS

(1) Codes to be used: (a) Net Proceeds or Payments;(b)Bonds, debentures and other long-term debt;(c) Include commercial paper; and (d) Identify separately such items as investments, fixed assets, intangibles, etc.

(2) Information about noncash investing and financing activities must be provided in the Notes to the Financial statements. Also provide a reconciliation between "Cash and Cash Equivalents at End of Year" with related amounts on the Balance Sheet.

(3) Operating Activities-Other: Include gains and losses pertaining to operating activities only. Gains and losses pertaining to investing and financing activities should be reported in those activities. Show in the Notes to the Financials the amounts of interest paid (net of amount capitalized) and income taxes paid.

(4) Investing Activities: Include at Other net cash outflow to acquire other companies. Provide a reconciliation of assets acquired with liabilities assumed in the Notes to the Financial Statements. Do not include on this statement the dollar amount of leases capitalized; instead provide a reconciliation of the dollar amount of leases capitalized with the plant cost.

	Description (See Instruction for Explanation of Codes).	Current Year to Date Month/Day/Year	Prior Year to Date Month/Day/Year
1	**Net Cash Flow From Operating Activities:**		
2	Net Income		
3	Noncash Charges (Credits) to Income:		
4	Depreciation		
5	Amortization		
6	Deferred Income Taxes		
7	Net (Increase) Decrease in Receivables		
8	Net (Increase) Decrease Inventory		
9	Net Increase (Decrease) in Payables and Accrued Expenses		
10	Other (specify)		
11	Net Cash Provided by (Used in) Operating Activities (lines 2 through 10)		

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF CASH FLOWS (continued)

	Description (See Instruction for Explanation of Codes).	Current Year to Date Month/Day/Year	Prior Year to Date Month/Day/Year
12	**Cash Flows From Investment Activities**		
13	Construction and Acquisition of Plant (Including Land)		
14	Gross Additions to Carrier Property		
15	Gross Additions to Non Carrier Property		
16	Other (specify)		
17	Cash Outflows for Plant (lines 14 through 16)		
18	Acquisition Of Other Noncurrent Assets (d)		
19	Proceeds From Disposal of Noncurrent Assets (d)		
20	Investments in and Advances to Assoc and Subsidiary Cos.		
21	Contributions and Advances from Assoc and Subsidiary Cos.		
22	Disposition of Investments in (and Advances to) Assoc and Subsidiaries Companies		
23	Purchase of Investment Securities (a)		
24	Proceeds from Sales of Investment Securities (a)		
25	Loans Made or Purchased		
26	Collections on Loans		
26	Net (Increase) Decrease in Receivables		
28	Net (Increase) Decrease in Inventory		
29	Net Increase (Decrease) in Payables and Accrued Expenses		
30	Other (specify)		
31	Net Cash Provided by (Used in) Investing Activities		

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF CASH FLOWS (continued)

		Current Year to Date Month/Day/Year	Prior Year to Date Month/Day/Year
32	**Cash Flow From Financing Activities**		
33	Proceeds from Issuance of		
34	Long-term debt (b)		
35	Capital Stock		
36	Other		
37	Net Increase in Short-term Debt (c)		
38	Other (specify):		
39	Cash Provided by Outside Sources (lines 34 through 38)		
40	Payment for Retirement of		
41	Long-term Debt (b)		
42	Capital Stock		
43	Other (specify):		
44	Net Decrease in Short-Term Debt (c)		
45	Dividends on Capital Stock		
46	Other (specify):		
47	Net Cash Provided by (Used in) Financing Activities		
48	Net Increase (Decrease) in Cash and Cash Equivalents (lines 11, 31, and 47)		
49	Cash and Cash Equivalents at Beginning of Period		
50	Cash and Cash Equivalents at End of Period		

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Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES

1. Report in columns (b) (c) (d) and (e) the amounts of accumulated other comprehensive income items, on a net-of-tax basis, where appropriate.

2. Report in columns (f) and (g) the amounts of other categories of other cash flow hedges.

3. For each category of hedges that have been accounted for as "fair value hedges", report the accounts affected and the related amounts in a footnote.

	Item (a)	Unrealized Gains and Losses on Available-for-Sale Securities (b)	Minimum Pension Liability adjustment (net amount) (c)	Foreign Currency Hedges (d)	Other Adjustments (e)
1	Balance of Account 77 at Beginning of Preceding Quarter				
2	Preceding Quarter Reclassification from Account 77 to Net Income				
3	Preceding Quarter Changes in Fair Value				
4	Total (lines 2 and 3)				
5	Balance of Account 77 at End of Preceding Quarter/ Beginning of Current Quarter.				
6	Current Quarter Reclassification From Account 77 to Net Income				
7	Current Quarter Changes in Fair Value				
8	Total (lines 6 and 7)				
9	Balance of Account 77 at End of Current Quarter				

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATEMENT OF ACCUMULATED COMPREHENSIVE INCOME AND HEDGING ACTIVITIES (continued)

	Other Cash Flow Hedges [Insert Category] (f)	Other Cash Flow Hedges [Insert Category] (g)	Totals for each category of items recorded in Account 219 (h)	Net Income (Carried Forward from Page 117, Line 72) (i)	Total Comprehensive Income (j)
1					
2					
3					
4					
5					
6					
7					
8					
9					

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

NOTES TO FINANCIAL STATEMENTS

1. Prepare the notes to the financial statements using the appropriate disclosure rules as prescribed in the Uniform System of Accountants and in accordance with current accounting principles. Use the space below for important notes regarding the Balance Sheet, Statement of Income and Retained Earnings, Statement of Cash Flows, and Statement of Other Comprehensive Income and Hedging Activities, or any other account thereof. Classify the notes according to each basic statement, providing a subheading for each statement except where a note is applicable to more than one statement.

2. Furnish particulars (details) as to any significant commitments or contingent assets or liabilities existing at end of quarter including a brief explanation of any action initiated by the Internal Revenue Service involving possible assessment of additional income taxes of material amount, or of a claim for refund of income taxes of a material amount initiated by the respondent. Give also a brief explanation of any dividends in arrears on cumulative preferred stock.

3. Furnish details on the accounting for the respondent's pensions and post-retirement benefits and explain any changes in the method of accounting for them. Include in the details a concise breakdown of the effect of the various components on income for the year, funding for the plan and accumulated obligations at year end.

4. Provide an explanation of any significant changes in operations during the period. Give the financial statement effects of acquiring oil pipelines by purchase or merger or by participating in joint ventures or similar activities.

5. Furnish details on the respondent's accounting for income taxes and provide an explanation of any changes in the methods of accounting for income taxes and give the financial statement effects resulting from these changes.

6. Provide an explanation of any significant rate or other regulatory matters involving the respondent during the period and give the effects, if any, on the respondent's financial statements.

7. Disclose details on any significant financial changes during the reporting period to the respondent's consolidated group that directly affect the respondent's operations including sales, transfers or mergers of affiliates, investments in new partnerships, sales of facilities or the sale of ownership interests in facilities to limited partnerships, investments in related industries, major investment in facilities, acquisitions by the parent corporation(s), and distribution of capital.

8. Explain concisely only those significant changes in accounting methods made during the period which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding period. Also give the approximate dollar effect of such change.

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

(a) Use the space below for management's discussion and analysis of financial condition and results of operation. The content of this schedule contains coverage of trends (favorable and unfavorable) and significant events or uncertainties in the areas of liquidity and capital resources that affect future business operations. See RM03-8-000 for further information.

(b) Make the statements explicit and precise, and number the responses in accordance with the items listed. Include the following disclosures as they apply to the respondent: (1) Regulatory accounting policies, (2) Revenue recognition, (3) Asset impairment, including goodwill and other intangible assets, (4) Environmental contingencies, (5) Litigation contingencies, (6) Defined benefit pension plans and other post-retirement benefit plans, (7) Cost capitalization policies, (8) Depreciation expense, (9) Decommissioning, (10) Asset retirement obligations, (11) Self insurance, (12) Unique ownership arrangements, (13) Guarantees and other assurances, (14) Off-balance sheet financing, (15) Related party transactions, (16) Energy trading and other related risk management, and (17) Other significant items.

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Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

OPERATING REVENUES

Report the respondent's pipeline operating revenues at the end of quarter, classified in accordance with the Uniform System of Accounts.

	Account (a)	Crude Oil End of Quarter Month/Day/Year (b)	Products End of Quarter Month/Day/Year (c)	End of Quarter Month/Day/Year (b)+(c)=(d)
1	(200) Gathering Revenues			
2	(210) Trunk Revenues			
3	(220) Delivery Revenues			
4	(230) Allowance Oil Revenues			
5	(240) Storage and Demurrage Revenue			
6	(250) Rental Revenue			
7	(260) Incidental Revenue			
8	TOTAL (lines 1 through 7)			

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Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

OPERATIONS, MAINTENANCE, AND GENERAL EXPENSES

Report the respondent's pipeline operating, maintenance and general expenses at the end of quarter, classified in accordance with the Uniform System of Accounts.

	Operating Expense Accounts (a)	Crude Oil Gathering End of Quarter Month/Day/Year (b)	Crude Oil Trunk End of Quarter Month/Day/Year (c)	Crude Oil Delivery End of Quarter Month/Day/Year (d)	End of Quarter Month/Day/Year (E)=(b)+(c)+(d)
1	**OPERATIONS AND MAINTENANCE**				
2	(300) Salaries and Wages				
3	(310) Materials and Supplies				
4	(320) Outside Services				
5	(330) Operating Fuel and Power				
6	(340) Oil Losses and Shortages				
7	(350) Rentals				
8	(390) Other Expenses				
9	Total (lines 2 through 8)				
10	**GENERAL**				
11	(500) Salaries and Wages				
12	(510) Materials and Supplies				
13	(520) Outside Services				
14	(530) Rentals				
15	(540) Depreciation and Amortization				
16	(550) Employee Benefits				
17	(560) Insurance				
18	(570) Casualty and Other Losses				
19	(580) Pipeline Taxes				
20	(590)Other Expenses				
21	Total General Expense (lines 11 through 20)				
22	TOTAL (lines 9 and 21)				

FERC FORM 6-Q (ED Month/Year)

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Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

OPERATIONS, MAINTENANCE AND GENERAL EXPENSES (CONTINUED)

Report the respondent's pipeline operating, maintenance and general expenses at the end of quarter, classified in accordance with the Uniform System of Accounts.

	Operating Expense Accounts	Products Trunk End of Quarter Month/Day/Year (f)	Products Delivery End of Quarter Month/Day/Year (g)	Products Total End of Quarter Month/Day/Year (h)=(f)+(g)	End of Quarter Month/Day/Year (i)=(e)+(h)
1	**OPERATIONS AND MAINTENANCE**				
2	(300) Salaries and Wages				
3	(310) Materials and Supplies				
4	(320) Outside Services				
5	(330) Operating Fuel and Power				
6	(340) Oil Losses and Shortages				
7	(350) Rentals				
8	(390) Other Expenses				
9	Total (lines 2 through 8)				
10	**GENERAL**				
11	(500) Salaries and Wages				
12	(510) Materials and Supplies				
13	(520) Outside Services				
14	(530) Rentals				
15	(540) Depreciation and Amortization				
16	(550) Employee Benefits				
17	(560) Insurance				
18	(570) Casualty and Other Losses				
19	(580) Pipeline Taxes				
20	(590)Other Expenses				
21	Total General Expenses (Lines 11 through 20)				
22	TOTAL (lines 9 and 21)				

FERC FORM 6-Q (ED Month/Year)

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Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

STATISTICS OF OPERATIONS (page 1 of 2)

1. Give particulars (details) by States of origin for crude oil and for each kind of product received quarter to date and totals only (i.e. no State detail) for number of barrels of crude oil and of each kind of product delivered out of the pipeline during through the end of the quarter. Classify and list in column (a) by States of origin the refined products transported in the following order: 29111, Gasoline, jet fuels, and other high volatile petroleum fuels, except natural gasoline; 29112, Kerosene; 29113, Distillate fuel oil; 29114, Lubricating and similar oils and derivatives; 29117, Residual fuel oil and other low volatile petroleum fuels; 29112, Products of petroleum refining, n.e.c.-Specify.

	State of Origin	Number of Barrels Received From Collecting Carriers (b)	Number of Barrels Received ORIGINATED On Gathering Lines (c)	Number of Barrels Received ORIGINATED On Trunk Lines (d)	Total Received (e)=(b)+(c)+(d)
1	CRUDE OIL				
2					
3					
4					
5	TOTAL				
6	PRODUCTS (STATE OF ORIGIN AND CODE)				
7					
8					
9					
10					
11	TOTAL				

Docket No. RM03-8-000
Appendix A: Forms 3-Q and 6-Q Samples.

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____ A Resubmission	Month/Day/Year	Month/Day/Year

STATISTICS OF OPERATIONS (page 2 of 2)

2. In column (b) show all oils received by the respondent from connecting carriers reporting to the Commission. In column (c) report all oils originating on respondent's gathering lines and in column (d) all oils received into respondent's trunk line, except receipts shown in column (b) and (c). Any barrels received into a pipeline owned by the respondent, but operated by others, should be reported separately.

3. Entries in column (e) should be the sum of columns (b), (c) and (d). In column (f) show all oils delivered to connecting carriers reporting to the Commission. In column (g) show all oils terminated on the respondent's gathering lines, and in column (h) all oils delivered out of the respondent's pipeline, except deliveries shown under columns (f) and (g).

	State of Origin	Number of Barrels Delivered Out to Connecting Carriers (f)	Number of Barrels Delivered Out TERMINATED On Gathering Lines (g)	Number of Barrels Delivered Out TERMINATED On Trunk Lines (h)	Total Delivered Out (i)=(f)+(g)+(h)
1	CRUDE OIL				
2					
3					
4					
5	TOTAL				
6	PRODUCTS (STATE OF ORIGIN AND CODE)				
7					
8					
9					
10					
11	TOTAL				

FERC FORM 6-Q (ED Month/Year)

Docket No. RM03-8-000
Appendix B: Proposed New Form 1 and 1-F Schedule

Name of Respondent	This Report is:	Date of Report	For the Quarter Ending
_____	____ An Original ____A Resubmission	Month/Day/Year	Month/Day/Year

PURCHASES AND SALES OF ANCILLARY SERVICES

Report the amounts for each type of ancillary service shown in column (a) for the year as specified in Order No. 888 and defined in the respondents Open Access Transmission Tariff.

(1) On line 1 columns (b) and (c) report the amount of ancillary services purchased and sold during the year.

(2) On line 2 columns (b) and (c) report the amount of reactive supply and voltage control services purchased and sold during the year.

(3) On line 3 columns (b) and (c) report the amount of regulation and frequency response services purchased and sold during the year.

(4) On line 4 columns (b) and (c) report the amount of energy imbalance services purchased and sold during the year.

(5) On lines 5 and 6, columns (b) and (c), report the amount of operating reserve spinning and supplement services purchased and sold during the period.

(6) On line 7 columns (b) and (c) report the total amount of all other types ancillary services purchased or sold during the year. Include in a footnote specify the amount for each type of other ancillary service provided.

	Type of Ancillary Service (a)	Amount Purchased For the Year Ending Month/Day/Year (b)	Amount Sold For the Year Ending Month/Day/Year (c)
1	Scheduling, System Control and Dispatch		
2	Reactive Supply and Voltage		
3	Regulation and Frequency Response		
4	Energy Imbalance		
5	Operating Reserve–Spinning		
6	Operating Reserve–Supplemental		
7	Other		
8	Total		

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Federal Register

Monday,
July 7, 2003

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Kansas; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–7522–5]

RIN–2040–ZA0C

Water Quality Standards for Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a primary contact recreation use designation for 1,056 waters, an expected aquatic life use designation for one of these waters, and a secondary contact recreation use designation for 230 waters in the State of Kansas to replace the use designations for those waters that EPA disapproved in 1998. EPA is promulgating these final water quality standards for the State of Kansas at this time pursuant to a court order requiring the Administrator to sign a final rule by June 30, 2003. Once the State of Kansas submits the necessary analyses and any corresponding changes to its water quality standards for specific waters and EPA approves that submission, EPA will initiate a rulemaking to withdraw this regulation for those waters.

DATES: This regulation is effective August 6, 2003.

ADDRESSES: The public record for this rulemaking has been established, is located at EPA Region 7, Information Resource Center, 901 North 5th Street, Kansas City, Kansas 66101, and can be reviewed between 8 a.m. and 4:30 p.m. Central Time, Monday through Friday, excluding legal holidays. For further information regarding access to the docket materials, call (913) 551–7241. You may have to pay a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning today's final rule, contact Mr. Martin Kessler, Public Affairs Specialist at *r7actionline@epa.gov* or at U.S. EPA Region 7, Office of External Programs, 901 North 5th Street, Kansas City, Kansas, 66101 (Telephone: 913–551–7003).

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I. Potentially Affected Entities

Citizens concerned with water quality in Kansas may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in Kansas could be indirectly affected by this rulemaking because water quality standards are used in determining water quality-based effluent limitations included in National Pollutant Discharge Elimination System (NPDES) permits. Categories and entities that may indirectly be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Kansas.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Kansas.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

EPA notes that nothing in this rulemaking—which establishes ''primary contact recreation'' as a Clean Water Act (CWA) use designation for 1,056 waters, or ''expected aquatic life use'' for one of these waters, and ''secondary contact recreation'' for 230 waters—affects the private property rights of landowners to deny public access to their own property. Use designations, such as those codified today, help establish water quality goals for particular water bodies; they do not create or abridge property rights regarding access to such waters. To illustrate this point, EPA notes that most of these waters had been subject to the State's default ''secondary contact recreation'' use designation until November 2001 (when the State removed this provision and EPA approved that action). That use designation, which commonly refers to recreational wading and other uses not likely to result in full-body immersion, had applied to these waters since at least 1994, and in many cases for years before that. However, EPA is not aware that any individual has interpreted that State use designation (made solely for CWA purposes) as official government sanction to enter private property for the purpose of wading in the streams so designated. Consequently, EPA has no reason to believe that this situation will change as a result of EPA's use designations today. The only difference between the State action and EPA's action today is the type of use designated, not whether the waters are subject to a use designation in the first instance.

II. Background

A. What Are the Statutory and Regulatory Requirements Relevant to This Action?

Section 303(c) of the Clean Water Act (CWA), 33 U.S.C. 1313(c), requires States and authorized Tribes to adopt water quality standards for waters of the United States within their applicable jurisdictions. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State water quality standards to include the designated use or uses to be made of the water, the criteria necessary to protect those uses, and an antidegradation policy. States are also required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c)(1). States are required to submit the results of these reviews to EPA for approval. 33 U.S.C. 1313(c)(2)(A). Section 303(c)(4) of the CWA requires EPA to promulgate water quality standards when necessary to replace disapproved State water quality standards.

Section 101(a)(2) of the CWA establishes as a national goal ''water quality which provides for the protection and propogation of fish, shellfish, and wildlife and * * * recreation in and on the water,'' wherever attainable. This national goal is commonly referred to as the ''fishable/swimmable'' goals of the CWA. (Hereafter, the fishable/swimmable goals are referred to as CWA section 101(a) goal uses.) Section 303(c)(2)(A) requires State water quality standards to ''protect the public health or welfare, enhance the quality of water and serve the purposes of this [Act].'' Further, States are required to take into consideration the waters' use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also to take into consideration their use and value for navigation. 33 U.S.C. 1313(c)(2)(A). States are free to designate more specific uses (*e.g.*, cold water aquatic life), or to designate uses not mentioned in the CWA, with the exception of waste transport or waste assimilation, which is not an acceptable use. 40 CFR 131.10(a). EPA's regulations at 40 CFR 131.10 describe the process States must follow and the analyses States must conduct prior to designating any uses that do not include the 101(a) goal uses.

B. What Actions Have Kansas and EPA Taken Leading to Today's Action?

On October 31, 1994, Kansas submitted a complete set of water quality standards to EPA for review and approval. As part of this submission, it also submitted the *Kansas Surface Water Register,* which contains the listing of all streams, lakes, and wetlands classified under the State's water quality standards, individual water body locational data and all designated uses for each stream segment, wetland, and lake. The 1994 *Kansas Surface Water Register,* adopted by reference at K.A.R. 28–16–28d(c)(2) [subsequently renumbered as K.A.R. 28–16–28d(d)(2)], divided each stream segment in the State's 1985 water quality standards into multiple parts and contained use designations for each newly identified segment. This greatly expanded the number of stream segments with water body-specific use designations.

In a February 19, 1998, letter from EPA Region 7 to the Secretary of the Kansas Department of Health and Environment (KDHE), EPA reviewed and approved in part and disapproved in part all of the State's new or revised standards. As part of that action, EPA disapproved the absence of a primary contact recreation use designation for more than 1,400 water bodies and the lack of an aquatic life use designation for one of those water bodies. The vast majority of those waters were designated for secondary contact recreation, *i.e.*, wading, by operation of the State's provision that provided a default secondary contact recreation use for waters that had no other recreation use designation. The State had provided no documentation indicating that a primary contact recreation use was not attainable, even though such documentation is required under 40 CFR 131.10(g) and (j). EPA therefore disapproved those use designations as being inconsistent with EPA's regulations.

As a part of this action, EPA also disapproved the following provisions of Kansas' 1994 water quality standards:

- The State's antidegradation policy regarding protection of Outstanding National Resource Waters (also commonly referred to as Tier 3 waters);
- Provisions governing discharges from waste stabilization ponds;
- Disinfection requirements;
- Provisions addressing the adoption of water quality criteria for the protection of the State's domestic water supply use;
- Several water quality criteria;
- The State's water quality standards implementation procedures;
- The State's antidegradation implementation procedures;
- The State's water quality standards provisions for assumed stream design flows in applying water quality criteria; and
- Provisions relating to waters with effluent-created habitat.

In June 1999, Kansas completed a triennial review of its water quality standards. The State adopted new and revised water quality standards on June 29, 1999, which became effective under State law on June 30, 1999. Kansas submitted these standards for EPA review and approval on August 10, 1999, as required under CWA section 303(c)(2)(A). In its submission, KDHE corrected several provisions disapproved by EPA in its February 1998 disapproval letter to make them consistent with the CWA. In addition, Kansas revised use designations for several water bodies and corrected errors in its 1994 submission. On January 19, 2000, EPA approved these corrections and revised use designations. EPA also identified, in its January 2000 letter, one stream segment in Kansas that is located wholly within Indian country, over which Kansas had not demonstrated jurisdiction for CWA purposes.

On July 3, 2000, EPA proposed to promulgate Federal water quality standards for the disapproved items not resolved by the State's 1999 revisions (see section III, below). EPA ultimately proposed to promulgate primary contact recreation use designations for 1,456 stream segments and lakes. EPA also proposed to promulgate the State's expected aquatic life use designation for one of those stream segments.

III. What Federal Water Quality Standards Did EPA Propose in July 2000?

On July 3, 2000, EPA proposed water quality standards for the State of Kansas. 65 FR 41216 (July 3, 2000). Specifically, EPA proposed: (1) An aquatic life use for one stream segment and a primary contact recreation use for 1,292 stream segments and 164 lakes; (2) a provision stating that all discharges to stream segments for which continuous flow is sustained primarily through the discharge of treated effluent shall protect the State's designated uses; (3) use of specific design flows (7Q10, 4B3), or other scientifically defensible design flows recommended by EPA to implement the State's chronic aquatic life criteria, and use of specific design flows (1Q10, 1B3), or other scientifically defensible design flows recommended by EPA to implement the State's acute aquatic life criteria; and (4) implementation procedures for the State's antidegradation policy to determine whether to allow a lowering of surface water quality by point sources

of pollution where nonpoint sources also contribute the pollutant of concern to that body of water.

Under its discretionary authority at CWA section 303(c)(4)(B) to address State water quality standards that the Administrator determines are inconsistent with the Clean Water Act, EPA also proposed two other water quality standards: numeric human health criteria for alpha- and beta-endosulfan, and a provision stating that water quality standards in Kansas apply to all privately owned surface waters in Kansas that are waters of the United States.

On October 13, 2000, KDHE submitted revised water quality standards to EPA for its review and approval. This submission contained, among other things, new or revised water quality standards addressing alpha-endosulfan and beta-endosulfan water quality criteria covered by EPA's July 2000 proposal. EPA approved these provisions by letter dated February 2, 2001, thereby removing the need for Federal water quality standards for this issue.

On September 9, 2001, the KDHE submitted revised water quality standards to EPA for its review and approval. This submission contained new or revised water quality standards addressing the following matters covered by EPA's July 2000 proposal: effluent-created habitat, stream design flow, procedures for implementing the State's antidegradation policy, and the applicability of water quality standards to publicly held and privately held classified ponds. Consequently, these new and revised State water quality standards addressed all but one of the remaining issues identified in EPA's 1998 disapproval decision.

In addition, as part of this submission the State removed its provision applying a default use designation of secondary contact recreation and adopted a provision that made use designations subject to the results of use attainability analyses. As a result of this action, all but two of the waters contained in EPA's proposal—which previously had been subject to the State's default secondary contact recreation use—were temporarily no longer subject to any recreation use designation. Under the new provision, which EPA approved, all use designations are to be based on a use attainability analysis conducted by or approved by the State.

By letter dated November 9, 2001, EPA approved the State's September 9, 2001, submission. EPA's approval of new or revised standards in 2000 and 2001 eliminated the need for a Federal promulgation regarding the previously disapproved provisions with the exception of EPA's disapproval of use designations for 1,456 water bodies.

On December 10, 2002, Kansas submitted to EPA the results of its triennial review and supporting analyses. Part of these revisions included use changes and use attainability analyses for waters subject to EPA's July 2000 proposal. As discussed in section IV.C., this submission and several additional actions have reduced the number of water bodies that are subject to EPA's final action today.

IV. What Federal Water Quality Standards Is EPA Promulgating Today?

In today's action, EPA is promulgating a primary contact recreation use designation for 1,056 waters, an expected aquatic life use for one of these waters, and a secondary contact recreation use designation for 230 waters, thereby addressing the last remaining matter subject to EPA's 1998 disapproval decision. Today's action is taking place pursuant to a 90-day schedule ordered by the U.S. District Court for the District of Kansas in *Kansas Natural Resource Council, et al.* v. *Whitman*, No. 00–2555–GTV (March 31, 2003). The court's decision and the basis for EPA's decisions are described below.

A. Background

As described in the previous section, CWA section 101(a)(2) establishes as a national goal ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water,'' wherever attainable (*i.e.*, the ''fishable/swimmable'' goal). Section 303(c)(2)(A) requires State water quality standards to ''protect the public health or welfare, enhance the quality of water and serve the purposes of this [Act].'' EPA's regulations at 40 CFR part 131 interpret and implement these CWA provisions by requiring that water quality standards provide for CWA section 101(a) goal uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability, *i.e.*, that a default designation of CWA section 101(a) goal uses should apply. The mechanism in EPA's regulations used to rebut this presumption is a use attainability analysis.

Under 40 CFR 131.10(j), States are required to conduct a use attainability analysis (UAA) whenever the State designates or has designated uses that do not include the CWA section 101(a) goal uses, when the State wishes to remove CWA section 101(a) goal uses, or when it adopts subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers, and (2) when cost-effective and reasonable best management practices are imposed on nonpoint source dischargers. See 40 CFR 131.10(d). EPA's regulations at 40 CFR 131.10 list grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use. Existing uses are defined by EPA's regulations as ''those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards.'' 40 CFR 131.3(e). A UAA is defined in 40 CFR 131.3(g) as a ''structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors.'' In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment. Guidance on water body surveys and assessment techniques is contained in the *Technical Support Manual, Volumes I–III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses.* Additional guidance is provided in the *Water Quality Standards Handbook: Second Edition* (EPA–823–B–94–005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the *Interim Economic Guidance for Water Quality Standards: Workbook* (EPA–823–B–95–002, March 1995).

EPA regulations effectively establish a ''rebuttable presumption'' that CWA section 101(a) goal uses are attainable and therefore should apply to a water body unless it is affirmatively demonstrated that such uses are not attainable. EPA adopted this approach in order to help achieve the national goal articulated by Congress that, ''wherever attainable,'' water quality should provide for the ''protection and propagation of fish, shellfish and wildlife'' and for ''recreation in and on the water.'' 33 U.S.C. 1251(a)(2). While facilitating achievement of Congress' goals, the ''rebuttable presumption'' approach preserves States' paramount role in establishing water quality standards by weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict

the States' discretion to determine that CWA section 101(a) goal uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a ''structured scientific assessment'' of use attainability. See 40 CFR 131.3(g) (defining use attainability analysis).

EPA believes that the rebuttable presumption policy reflected in these regulations is an essential foundation for effective implementation of the CWA as a whole. The ''use'' of a water body is the most fundamental articulation of its role in the aquatic and human environments, and the water quality protections established by the CWA follow from the water's designated use. If a use lower than a CWA section 101(a) goal use is designated based on inadequate information or superficial analysis, water quality-based protections that might have made it possible for the water to achieve the goals articulated by Congress in CWA section 101(a) may not be put in place.

EPA seeks, through its oversight under section 303(c) of the Act, to ensure that any State's decision to forgo protection of a water body's potential to support CWA section 101(a) goal uses results from an appropriately ''structured'' scientific analysis of use attainment. Where EPA concludes that the State failed to adequately justify a use designation lower than a CWA section 101(a) goal use designation, EPA disapproves the use designation. In some cases, the State may decide to revise its use classifications to create additional designated uses that are also protective of the CWA section 101(a) goal uses. In other cases, the State may decide to conduct a more thorough analysis of use attainability sufficient to rebut the fishable/swimmable presumption reflected in the regulations. Where a State does neither, however, federally promulgated CWA section 101(a) goal uses will ensure the water quality goals of the Act are recognized.

In the July 2000 proposal, EPA requested data and information that could further support or refute the attainability of EPA's proposed designated uses. EPA evaluated all data and information submitted by commenters. For EPA's specific responses to comments received, see the Response to Comments document contained in the administrative record to this rulemaking. A general discussion of EPA's evaluation of this data and information is described in section IV.B.3.

In response to EPA's request for comments on EPA's proposed designated uses, EPA received several comments questioning EPA's use of the rebuttable presumption for assigning designated uses. Specifically, several commenters asserted that sufficient information exists in the administrative record to confirm that, as a class, the undesignated waters would not be expected to sustain either primary contact recreation or aquatic life uses and, as such, that this information refutes EPA's presumption that primary contact recreation and aquatic life uses are appropriate. EPA disagrees that information of such a general nature constitutes the type of structured scientific assessment required by EPA's regulations to rebut the presumption. EPA believes that use attainability analyses should be based on data applicable to individual waters. Indeed, numerous commenters asserted that use designation decisions should be made on a case-by-case basis, taking into account local considerations. A UAA is a mechanism to accomplish this. Where water body-specific data and information have been submitted by the State, provided by commenters, or collected by EPA, EPA has considered that data and information to determine whether those waters should be excluded from today's rulemaking. See section IV.B. for a further discussion of EPA's analysis of this data and information.

Other commenters asserted that the use of the ''rebuttable presumption'' approach EPA employed to propose use designations is contrary to law. EPA disagrees. As described above, EPA believes that using the ''rebuttable presumption'' approach is supported by sections 101(a) and 303(c) of the Clean Water Act. Further, EPA's longstanding interpretation, as reflected in its 1983 regulations, is that the purposes of the Act are better served by requiring a justification for designating uses less than fishable/swimmable rather than demanding an affirmative showing of attainability before requiring a fishable/swimmable use designation. See 40 CFR 131.10. Moreover, the court order resulting in today's action, *Kansas Natural Resource Council, et al.* v. *Whitman*, No. 00–2555–GTV (D. Kansas, March 31, 2003), specifically considered EPA's rebuttable presumption approach and held that EPA must employ the concept in its promulgation of water quality standards for the State of Kansas. The court recognized that, for many of these waters, the order's 90-day schedule could result in water bodies being given a primary contact recreation designation when a subsequently performed use attainability analysis might rebut such a designation. However, the court stated, ''Unless and until unattainability is demonstrated as specified by the regulations, the purpose of the Clean Water Act is best served by protecting the waters as if they are fishable/swimmable.''

Lastly, several commenters suggested that under EPA's rebuttable presumption approach, secondary contact recreation is an appropriate presumption since it is one of the goal uses of the Clean Water Act. While EPA agrees that secondary contact recreation is indeed one of the Clean Water Act's goals, EPA disagrees that it supplants primary contact recreation for purposes of the rebuttable presumption. Section 101(a)(2) specifically calls for the protection of recreation in and on the water. In other words, the statute contemplates that both recreation uses will be protected wherever attainable. Within the Kansas Surface Water Quality Standards, the primary contact recreation use is the only designated use that will assure protection of both of these Clean Water Act goals.

B. EPA's Analysis of Information Received for Specific Stream Segments and Lakes

When promulgating replacement Federal water quality standards, EPA follows the same rebuttable presumption approach that applies under the regulation to State decision-making. 40 CFR 131.22(c). EPA does not believe it is appropriate to alter the current approach for establishing use designations under 40 CFR part 131 merely because the forum for decision-making has changed from the State to the Federal level. Attaining the goals articulated by Congress is no less important when EPA, as opposed to a State, is making use designation determinations. Moreover, EPA believes that failure to apply the rebuttable presumption in the Federal context could undermine how that presumption currently applies to State decision-making under the Federal regulations. If the presumption did not apply equally in the State and Federal decision-making process, a State could effectively shift the burden of demonstrating attainability simply by failing to adequately justify its use designation and thereby triggering a Federal rulemaking proceeding. This result would be contrary to the statute's expectation that States retain primary responsibility for making water quality standards decisions.

At the time of the July 2000 proposal, EPA solicited public comment and

information on the attainability of the proposed Federal uses for the water bodies subject to that proposal. EPA also encouraged the State to continue evaluating the appropriate use designations for these waters and to revise its water quality standards, as appropriate. On March 26, 2001, EPA and the State of Kansas entered into a Memorandum of Understanding (MOU) establishing a schedule to resolve the outstanding disapproved portions of the 1994 Kansas Surface Water Quality Standards. The MOU included a schedule by which the State would conduct use attainability analyses for each of the 1,456 waters contained in EPA's July 2000 proposal. Consistent with the MOU, the State has submitted UAAs for many of the waters identified in EPA's proposed rule.

EPA has evaluated the data and information it received from commenters and the State since the July 2000 proposal. Three categories describe the data and information EPA used to determine the scope of today's final rule:

(1) Kansas' December 10, 2002, submission of new or revised use designations, including UAAs for 225 waters;

(2) 298 use attainability analyses provided by KDHE to EPA on April 11, 2003; and

(3) Information regarding specific waters provided in comments on EPA's July 2000 proposal and additional information collected by EPA for these waters.

In evaluating the information provided to EPA prior to the date of this final regulation, EPA considered whether the data and information sufficiently demonstrated that primary contact recreation is not attainable consistent with the Federal regulations at 40 CFR 131.10(g). For information it received from the State and the public, EPA used the State's protocol for conducting recreation UAAs. EPA had previously reviewed the State's recreation UAA protocol, which is contained in the State's UAA Guidance, and believes that UAAs conducted using the protocol will likely be consistent with Federal regulations.

As a result of this evaluation, 167 waters included in EPA's July 2000 proposal are not included in today's final rule. These waters fall into one of three categories:

(1) Waters where the State has adopted and EPA has approved new or revised recreation use designations in its water quality standards (these include waters designated by the State for primary contact recreation or for secondary contact recreation uses supported by a UAA);

(2) Waters where the State has provided information supporting the State's previously disapproved 1994 recreation use designations; and

(3) Waters where the State has provided information demonstrating that the water body does not exist.

In addition, EPA identified three stream segments originally included in its July 2000 proposal that had been combined with other stream segments and therefore do not need to be listed separately. The State submitted these administrative changes to EPA on August 10, 1999, which EPA approved on January 19, 2000. EPA inadvertently included these three stream segments as separate listings in its July 2000 proposed rule. Today's rule, however, reflects these changes and is consistent with the State's 2002 *Surface Water Register*. A list of these waters may be found in the document entitled *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule.

The remaining 1,286 waters are included in today's final rule; EPA is promulgating either primary or secondary contact recreation use designations for each of these waters. Four categories describe these waters. Secondary contact recreation uses are designated in today's rule for waters contained in the first category. Primary contact recreation uses are designated for the waters contained in the remaining three categories.

(1) Waters where the State has not yet designated secondary contact recreation in the *Surface Water Register,* but either the State or EPA has performed UAAs consistent with 40 CFR 131.10(g) demonstrating that secondary contact recreation is the appropriate use;

(2) Waters where the State has not yet designated primary contact recreation in the *Surface Water Register*, but either the State or EPA has collected data and information indicating that the primary contact recreation use is attainable;

(3) Waters where the State's analysis does not support the recreation use adopted in the State's *Surface Water Register*; and

(4) Waters where EPA has not received any information or where the information received is insufficient to conclude that primary contact recreation is not attainable.

EPA's detailed analysis of the information submitted by the State of Kansas, by commenters on the proposed rule, and information collected by EPA is presented below.

1. Kansas' December 10, 2002, Submission of Water Quality Standards

On December 10, 2002, KDHE provided EPA with 225 UAAs along with revised water quality standards. For the majority of these waters, the State revised its *Surface Water Register* to reflect the water bodies' new primary contact recreation use designations, secondary contact recreation use designations, or the removal of recreation use designations. EPA reviewed the State's UAAs for consistency with the Federal regulations and collected additional data for 16 waters where the State's UAAs were inconsistent with EPA's regulations and the State's UAA protocol. As a result of this review, on June 24, 2003, EPA withdrew its 1998 disapproval with respect to 161 of these waters and approved the State's use designation decisions for these waters. This approval decision removed the need for Federal promulgation of use designations for these waters. Therefore, EPA is not including these 161 waters in today's rule. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule.

In addition to the 161 waters for which EPA approved the State's use designation decisions, there are 43 other waters for which the State's UAAs (and information collected by EPA for two of these waters) successfully demonstrate that the primary contact recreation use is not an attainable use and that the appropriate use for these waters is secondary contact recreation. However, Kansas has not yet changed its *Surface Water Register* to designate any recreational uses for these waters. Therefore, EPA is promulgating secondary contact recreation for these 43 water bodies.

For another 16 waters, analyses conducted by the State indicate that primary contact recreation is attainable based on an evaluation of a variety of factors, including activities occurring there, water quality, flow, and depth. The State's UAAs recommended the waters for primary contact recreation, but Kansas has not yet adopted these recreation uses into the *Register*. Pursuant to EPA's regulations, the information in the UAA indicates that primary contact recreation is the appropriate use. For these 16 waters, EPA is promulgating primary contact recreation use designations. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the

administrative record accompanying this final rule.

EPA reviewed the analyses provided by the State to assure consistency with the Clean Water Act and the implementing Federal regulations. For five of these waters, EPA found that the State's analyses were insufficient either to support the recreation uses contained in the State's 2002 *Surface Water Register* or to demonstrate that primary contact recreation is unattainable. Therefore, EPA is promulgating primary contact recreation for these five water bodies. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule.

In summary, today's rule contains use designations for 64 waters for which the State prepared UAAs in connection with its December 2002 submission but has not yet made use designation changes in its *Surface Water Register*. Once the State adopts and EPA approves use designations for specific waters, EPA will initiate withdrawal of its corresponding Federal use designations for those water bodies.

2. Use Attainability Analysis Information Provided by the State of Kansas to EPA on April 11, 2003

On April 11, 2003, the State provided to EPA an additional 298 UAAs that the State conducted during 2002 as part of its scheduled review of all classified waters under State law and the State's Memorandum of Understanding with EPA. EPA reviewed the information contained in the State's UAAs and collected additional data for eight of these waters. As a result of this review, EPA found that, for four waters, the State's UAAs support the State's original 1994 recreation use designations. Consequently, on June 24, 2003, EPA withdrew its 1998 disapproval with respect to these four waters and approved the State's designated uses for these waters. This action removes the need for Federal promulgation of designated uses for these waters. Therefore, EPA is not including these waters in today's final rule. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule.

For two other waters, Mulberry City Lake and Frazier Lake, the State's analyses demonstrate that these water bodies do not exist; therefore, EPA is removing these two waters from the scope of this rulemaking. Information provided by the State indicates that Mulberry City Lake is not a known water body in Kansas. It had erroneously been included in the State's 1994 *Surface Water Register* and as part of EPA's 1998 disapproval and July 2000 proposal. The State included Frazier Lake in its 1994 *Surface Water Register*, even though at the time it did not have the characteristics of a lake, because it understood that a lake bearing that name would be created by impounding a stream. In 2003, the State provided information indicating that the project was abandoned. Therefore, Frazier Lake was never created. Based on this new information, EPA is not including these water bodies in today's final rule.

For the remaining 292 waters, based on the information contained in the remaining UAAs conducted by Kansas and the additional information collected by EPA, EPA determined, consistent with 40 CFR 131.10, that a primary contact recreation use designation is appropriate for 143 waters and a secondary contact recreation use designation is appropriate for 149 waters. The State has not yet revised its *Surface Water Register* to codify these primary and secondary contact recreation use designations for any of these waters. Therefore, EPA is today promulgating either primary contact recreation use or secondary contact recreation use designations for these waters consistent with the State's and EPA's analyses. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule.

In its July 2000 proposal, EPA proposed to designate Mined Land Lakes for primary contact recreation. Information in the UAAs provided by the State in April 2003 indicates that 43 individual lakes comprise Mined Land Lakes. (EPA identified these lakes as two separate entries in its July 2000 proposal because EPA had no basis—other than two different hydrologic unit codes—to distinguish among them.) The State conducted UAAs for all 43 lakes that indicate primary contact recreation is the appropriate designated use for all of these water bodies. For simplicity and due to the fact that the information EPA received from the State indicates that all the lakes comprising Mind Land Lakes are capable of supporting primary contact recreation, today's final rule continues to list Mined Land Lakes as two entries in its regulation.

Once the State adopts and EPA approves use designations for these 292 waters, EPA will initiate withdrawal of its corresponding Federal use designations for these waters.

3. Information Submitted by Commenters in Response to EPA's July 2000 Proposal and Information Collected by EPA

At the time of its July 2000 proposal, EPA solicited public comment and information on the attainability of the proposed Federal uses for the water bodies subject to that proposal. Prior to today's final action, EPA considered the information provided to EPA during the public comment period for the July 2000 proposed rule and information since collected by EPA. Some of the information submitted to EPA indicated that primary contact recreation uses may not be attainable for particular water bodies and that, therefore, the ''presumption'' of primary contact recreation was potentially rebutted. In reviewing public comments to determine whether the presumption had been rebutted for a particular water body, EPA considered a number of factors, including (1) whether the comment identified a specific water body or provided reasonably specific locational information for EPA to use to identify the water body discussed in the comment; (2) whether the comment stated or clearly implied that because of the depth or flow level of the water, the water body was not capable of supporting primary contact recreation during any part of the recreation season (April through October under Kansas law); and (3) whether the comment claimed that the water should not be designated for primary contact recreation.

For 93 water bodies, EPA determined that the information provided by commenters potentially rebutted the presumption of primary contact recreation. For these waters, EPA collected additional information consistent with the requirements of 40 CFR 131.10(g) to determine the appropriate recreational use of the water body. If Kansas had not yet completed an acceptable use attainability analysis for a particular water body, EPA—using Kansas' expedited recreational use attainability analysis protocol in coordination with the State—performed a use attainability analysis. As a result, EPA collected additional information for 93 waters. Based on this information, EPA determined, consistent with 40 CFR 131.10, that a primary contact recreation use designation is appropriate for 53 waters and a secondary contact recreation use designation is appropriate for 38 waters. The State has not yet adopted these use designations for any of these waters. Therefore, EPA is today promulgating primary contact recreation use

designations for 53 waters and secondary contact recreation use designations for 38 waters. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule.

For the remaining two waters identified in public comments as potentially rebutting the presumption of primary contact recreation, EPA staff attempted to collect additional information. However, these waters are located entirely on property that had no access points available to the EPA staff that performed the use attainability analyses. Because these waters could not be assessed in a manner consistent with the requirements of 40 CFR 131.10(g), EPA is using the rebuttable presumption to promulgate a use designation of primary contact recreation for these two waters. A list of these waters may be found in *A Summary of EPA's Use Designation Decisions* contained in the administrative record accompanying this final rule. For these 93 waters, as for all waters subject to today's rule, once the State submits and EPA approves use designations for these waters, EPA will initiate withdrawal of the Federal use designations.

Some of the information provided to EPA in the form of comments was insufficient to rebut the presumption that the waters should be designated for primary contact recreation. Comments in this category were ones that provided no information regarding the name or location of a water body or, contrary to the commenters assertion, included information that indicated that the water was capable of supporting primary contact recreation during at least a portion of the recreation period. In addition, a number of commenters specifically requested that the water body they identified be protected by promulgation of a primary contact recreation use designation. For EPA's specific responses to comments received, see the Response to Comments document contained in the administrative record to this rulemaking.

C. EPA's Final Use Designation Decisions for Specific Stream Segments and Lakes

EPA is today promulgating a primary contact recreation use for 1,056 waters and a secondary contact recreation use for 230 waters. The 1,056 waters for which EPA is promulgating a primary contact recreation use designation consist of (1) 844 waters for which EPA has not received information sufficient to rebut the presumption of primary contact recreation; and (2) 212 waters for which EPA has received information supporting the waters' designation for primary contact recreation but for which Kansas has not yet adopted that designated use. Once Kansas adopts, and EPA approves, use designations for these waters, EPA will initiate withdrawal of the Federal use designations promulgated for such waters.

EPA is promulgating secondary contact recreation for 230 waters for which either Kansas or EPA performed use attainability analyses consistent with the requirements of 40 CFR 131.10(g) that demonstrated that secondary contact recreation was the appropriate use, but for which Kansas has not adopted a secondary contact recreation use designation. Once the State adopts and EPA approves an appropriate designation for any of these waters, EPA will initiate a withdrawal of the use designations promulgated for such waters. A summary of this information is provided in Table 1.

TABLE 1.—SUMMARY OF EPA'S USE DESIGNATION DECISIONS

	No. of waters in July 2000 proposal	Waters not in final rule					Waters included in final rule			
		UAA supports 2002 use designations	UAA supports 1994 use designation	Information indicates the waters do not exist	Total	Analysis supports SCR, but State has not yet adopted SCR	Analysis supports PCR, but State has not yet adopted PCR	Analysis is insufficient to support State's use designation	Water is presumed PCR due to insufficient or no existing information	Total
Kansas 2002 WQS submittal	225	121	40	0	161	43	16	5	N/A	64
Kansas 2003 UAAs	298	N/A	4	2	6	149	143	N/A	N/A	292
Information received on waters addressed solely by comments and additional information collected by EPA	93	N/A	0	0	0	38	53	N/A	2	93
Insufficient or no information	837	N/A	N/A	N/A	0	N/A	N/A	N/A	837	837
Totals	1,453	121	44	2	166	230	212	844		1,287

Note: As described in Section IV.B., three water body segments contained in the July 2000 proposal have been combined with other segments, resulting in a total of 1,453 waters.
SCR—secondary contact recreation.
PCR—primary contact recreation.

For the waters where EPA is promulgating either primary contact recreation or secondary contact recreation use designations in today's final rule, the State's currently effective water quality criteria for those designated uses apply. The currently effective fecal coliform water quality criterion for CWA purposes adopted by Kansas for the protection of primary contact recreation is a geometric mean of 200 organisms per 100 milliliters from April 1 through October 31, and 2,000 organisms per 100 milliliters from November 1 though March 31. The currently effective water quality criterion for the protection of secondary contact recreation is 2,000 organisms per 100 milliliters all year.

If, in the future, the State adopts and EPA approves revisions to its water quality criteria for the protection of primary and secondary contact recreation uses, those water quality criteria will be effective for CWA purposes and will apply, as appropriate, to the waters for which EPA is promulgating use designations today.

In addition to the recreation use designations being promulgated today, EPA is also promulgating the State's expected aquatic life use designation for one stream segment, Whiskey Creek, that the State designated for a restricted aquatic life use in 1994 without an adequate supporting UAA. Because the State assigns the expected aquatic life use category to a majority of its surface waters, and EPA received no additional

information to indicate that Whiskey Creek contains aquatic life conditions other than common habitat types and indigenous biota, EPA believes that an expected aquatic life use designation is appropriate for aquatic life in Whiskey Creek. Therefore, EPA has designated Whiskey Creek for expected aquatic life. This water is identified in 131.34(a) in today's rule. Once the State adopts and EPA approves an appropriate designation for this water body, EPA will initiate a withdrawal of the use designation promulgated for this water body.

D. Effect of Today's Rulemaking on the State's Water Quality Programs

EPA's approach in this rulemaking does not undermine the State's primary role in designating uses for waters in Kansas. EPA prefers that States establish their own regulations. Consequently, on March 26, 2001, EPA embarked on a process with the State of Kansas to resolve the remaining issues identified in EPA's 1998 disapproval decision and obviate the need for EPA rulemaking. EPA Region 7 and the State of Kansas entered into a Memorandum of Understanding (MOU) establishing a schedule to resolve the outstanding disapproved portions of the 1994 Kansas Surface Water Quality Standards. The MOU included a schedule by which the State would conduct use attainability analyses for a total of 1,456 waters not designated for primary contact recreation uses in its 1994 revisions. The Kansas legislature later passed a law requiring KDHE to develop recreation UAAs for all State waters on a regular schedule by October 2005. KSA–82a-2004. The schedule established by the Kansas legislature superseded the one established by the MOU. However, today's rulemaking by EPA does not supersede or moot any of the requirements for KDHE to conduct UAAs contained in the statute. Indeed, EPA fully expects the State to continue to develop UAAs on the schedules set forth in State law and to adopt new or revised uses designations when appropriate.

If the State's forthcoming UAAs indicate that primary contact recreation uses are not attainable for waters designated for that use in today's rule and EPA approves the new use designations adopted by the State, EPA will initiate withdrawal of the use designations promulgated today for such waters. For over 350 waters in today's rule, the uses being promulgated today are consistent with analyses provided to EPA by the State. For these waters, the State need not conduct any further analyses and can simply adopt the use designations for the specific waters identified in today's rule. Once the designated uses are adopted by the State for specific waters and are submitted to and approved by EPA, EPA will initiate withdrawal of its rulemaking for those waters. Consequently, due to the schedule by which the State is expected to complete UAAs for the remaining waters in today's rule and the discretion the State is afforded by the Clean Water Act and its implementing regulations, EPA does not anticipate that today's regulation will have a significant effect on the State's water quality program and potentially affected entities.

Further, water quality standards do not directly affect any entity. It is only through the implementation of these water quality standards through such mechanisms as NPDES permits that these water quality standards will have any direct effect. The State has flexibility in how it implements these water quality standards. EPA has included a variance provision in today's final rule, 40 CFR 131.34(c), authorizing the Regional Administrator to grant variances based upon a permittee's demonstration, consistent with the Federal regulations, that the use is not attainable. Variances are particularly suitable for instances where the cause of nonattainment is discharger-specific and it appears that the designated use in question will eventually be attainable or be demonstrated to be unattainable. See section VI.C. Additionally, the State will use these water quality standards in identifying impaired waters and establishing Total Maximum Daily Loads (TMDLs). Where the State identifies waters subject to this rulemaking as impaired, the State has discretion in scheduling the water for TMDL development. Further discussion is contained in Section VI.D.

The designation of uses in this rule is not intended to apply to waters within Indian country. The 1999 *Kansas Surface Water Register* included some stream segments that may be located wholly or partly in Indian Country. EPA approval of designated uses for waters in Kansas has never been intended to apply to any waters located within Indian Country because EPA has not analyzed or approved the State's authority to adopt water quality standards for waters in Indian Country. EPA has recommended that the State clarify this matter by amending the *Kansas Surface Water Register* to specify that the State's water quality standards do not apply to any portions of waters located in Indian Country. EPA is working with Tribes in Region 7 to identify those Tribes that may consider seeking authorization to administer the water quality standards program under the CWA. This effort is part of a national effort to ensure there are water quality standards for Indian Country waters.

V. Economic Analysis

This final rule will have no direct impact on any entity because the rule simply establishes water quality standards (*e.g.*, use designations) which by themselves do not impose any costs. These standards, however, may serve as a basis for development of NPDES permit limits. In Kansas, the State is the NPDES permitting authority and retains considerable discretion in implementing standards. Thus, until the State implements these water quality standards, there will be no effect on any entity. Nonetheless, EPA prepared a preliminary analysis to evaluate potential costs to NPDES dischargers in Kansas associated with future State implementation of EPA's Federal standards.

Any NPDES-permitted facility that discharges to water bodies affected by this rule could potentially incur costs to comply with the rule's provisions. The types of affected facilities may include industrial facilities and publicly owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, although EPA recognizes that the State may decide to impose controls on these sources to achieve water quality standards. As a technical matter, nonpoint source discharges are difficult to model and evaluate for potential costs because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, the evaluation of nonpoint sources and their effects on the environment is highly site-specific and data sensitive. In addition, EPA did not address the potential monetary benefits of this rule for Kansas.

A. Identifying Affected Facilities

To identify facilities potentially affected by the primary or secondary contact recreation uses promulgated in today's rule, EPA used an inventory of affected facilities submitted by the KDHE in its comments on the proposed rule. This list identifies 416 facilities—14 majors and 402 minors. Of the stream segments and lakes included in the rule, one stream segment is also lacking an aquatic life support use (Whiskey

Creek). EPA identified one facility that discharges to Whiskey Creek. However, just prior to EPA publishing this final rule, KDHE provided EPA with an updated inventory identifying a total of 183 potentially affected facilities. The smaller number of facilities reflects the narrowed scope of this final rule relative to EPA's July 2000 proposal. Thus, EPA's economic analysis described in this section likely overstates the potential economic impact of this action in two respects: First, because EPA estimated the cost of controls based on the universe of 416 facilities identified as part of the proposed rule; and second, because EPA assumed that all of these facilities discharge to waters protected for primary contact recreation, when in fact many waters included in this final rule are being designated for secondary contract recreation.

B. Evaluating Sample Facilities

In its comments on the proposed rule, KDHE included an analysis of costs for all 416 facilities it identified. For one subgroup of these facilities (283 conventional lagoons), KDHE provided effluent data for 20. Thus, EPA used the data for the 20 facilities to review and evaluate KDHE's analysis of costs for this subgroup. For another subgroup (133 mechanical treatment plants), effluent data is available for five facilities in EPA's Permit Compliance System. Thus, EPA used the data for these five facilities to review and evaluate KDHE's analysis of costs for this subgroup. The number of facilities identified and the number of facilities for which EPA evaluated data are presented in Table 2.

TABLE 2.—NUMBER OF FACILITIES POTENTIALLY AFFECTED AND EVALUATED

Provision	Potentially affected facilities [1]			Evaluated facilities		
	Majors	Minors	Total	Majors	Minors	Total
Primary or Secondary Contact Recreation [2]	14	402	416	3	22	25
Aquatic Life [3]	1	0	1	1	0	1

[1] **Source:** KDHE comments on proposed rule (Kansas Department of Health & Environment, Comments on EPA Proposed Water Quality Standards Promulgation, October 16, 2000). However, just prior to EPA publishing this final rule, KDHE provided EPA with an updated inventory of 183 potentially affected facilities reflecting the narrowed scope of this final rule. Thus, EPA analysis likely overstates the potential economic impact of this action.
[2] Facilities discharging to water bodies for which EPA is promulgating primary or secondary contact recreation use designations.
[3] Includes facility discharging to water body for which EPA is promulgating an existing aquatic life use designation.

C. Method for Estimating Potential Compliance Costs

For facilities discharging to waters with a new primary contact recreation use designation, EPA assumed that a sample facility would have a reasonable potential to exceed water quality criteria for fecal coliforms (and require a permit limit) if the maximum effluent concentration exceeds the most stringent water quality criterion (the monthly average of 200 colonies per 100 ml). EPA also assumed a facility would have a reasonable potential if it currently has a limit for fecal coliforms, or if it discharges treated domestic sewage that has not been disinfected. For facilities with a reasonable potential, EPA assumed that projected effluent limits would be the same as the State's existing water quality criteria for fecal coliforms (a monthly geometric mean of 200 colonies per 100 ml and a weekly geometric mean of 400 colonies per 100 ml) because EPA guidance recommends this approach (Memo from Jeffrey G. Miller, Deputy Assistant Administrator, Water Enforcement to Regional Enforcement Directors, Regional Permit Branch Chiefs, and NPDES State Directors, February 1977).

For facilities with a reasonable potential to exceed water quality criteria for fecal coliforms, EPA assumed that a sample facility would incur costs if its maximum effluent concentration (or existing permit limit, whichever is smaller) exceeds the most stringent criterion. EPA also assumed that facilities discharging domestic sewage without a disinfection system currently in place would incur costs. EPA assumed that ultraviolet (UV) light disinfection would be installed at facilities with effluents containing domestic sewage that do not have a disinfection system in place. Where EPA determined that facilities with existing disinfection systems would not be likely to meet the projected effluent limits, EPA assumed that treatment process optimization will be necessary.

One facility discharges to a stream for which EPA is promulgating an existing aquatic life use designation. However, because effluent data are not available for this facility, EPA estimated at the time of proposal that it does not have reasonable potential to cause exceedences of chronic aquatic criteria. Consequently, EPA anticipates no cost for this provision. Commenters on the proposed rule did not disagree with EPA's identification of this facility or its conclusions regarding its reasonable potential to cause exceedances of chronic aquatic life criteria.

D. Results

EPA estimated the potential costs associated with its decision to designate water bodies for (1) primary and secondary contact recreation uses, and (2) an aquatic life use. For waters designated for either a primary or a secondary contact recreation use, there are 416 potentially affected facilities. EPA estimated costs based on data for 25 of these facilities, and extrapolated the results to all potentially affected facilities.

EPA estimated that the potential total statewide annual cost associated with designating all of the affected water bodies for primary contact recreation would be approximately $1.8 million. Nearly all of the affected facilities would be minor dischargers, and the majority of those are conventional lagoons that would probably need UV disinfection to reduce fecal coliforms. As previously noted, EPA's economic analysis likely overstates the potential economic impact of this action because EPA based its projected effluent limitations and the subsequent cost of controls for potentially affected entities on meeting the fecal coliform criterion associated with the primary contact recreation use. The potential cost to facilities discharging to waters designated for secondary contact recreation will likely be less.

EPA estimated that the potential cost associated with promulgating an existing aquatic life use on the affected water body is zero. This estimate is based on the one affected facility that EPA identified.

E. Total Statewide Costs

Table 3 summarizes the total estimated potential statewide costs of today's rule. As described earlier, much

of the costs for this rule may result from the need for minor dischargers to install disinfection systems.

TABLE 3.—TOTAL ESTIMATED POTENTIAL STATEWIDE COSTS

[2002 $/yr]

Provision	Estimated annual cost
Facilities Discharging to Waters Lacking Primary Contact Recreation Designated Use ..	1,800,000
Facilites Discharging to Waters Lacking Aquatic Life Designated Use	0
Total	1,800,000

F. Significant Comments on the Economic Analysis for the Proposed Rule

In comments submitted on the proposed rule, KDHE provided detailed inventories of facilities affected by each provision of the proposed rule. In comparison, EPA's estimates of affected facilities used to analyze costs for the proposed rule were incomplete, because of missing data. Therefore, because the State of Kansas should have the best information on the location of its facilities, EPA based its analysis of the final rule on KDHE's inventories.

To estimate potential compliance costs, EPA generally followed the approach used by KDHE in a cost impact analysis submitted as part of its comments on the proposed rule. EPA considered the same general categories of facilities; however, EPA's methodology differed in a number of key details.

For each of the 133 mechanical treatment plants and aerated lagoons, KDHE performed a facility-by-facility assessment of the treatment technologies that the facilities might need to install because of this rule based on data regarding existing treatment processes and effluent concentrations. KDHE concluded that 65 facilities would probably need to install treatment for fecal coliforms. However, the KDHE cost impact analysis did not include the facility-specific data on which these assessments were based. Therefore, EPA used existing data available from PCS to examine KDHE's conclusions. PCS data for fecal coliform, available for five facilities in the potentially affected universe, indicated that four of these facilities would probably need to install additional treatment. Because PCS data were consistent with KDHE's conclusions for each facility, EPA accepted KDHE's conclusions regarding which facilities would need additional treatment, except the one for which PCS data showed otherwise. KDHE concluded that about half of the affected facilities would only need to expand their existing disinfection process and would not need UV disinfection. However, since EPA did not know the specific disinfection processes currently in operation at the facilities, EPA conservatively assumed that all facilities would need to install UV disinfection.

For conventional lagoons, KDHE provided two years of effluent sampling data for 20 sample facilities. EPA examined the sampling data for the 20 sample facilities and determined that only 8 of the facilities (40% of sample) would need to install additional treatment for fecal coliforms. EPA assumed that each facility would pursue the lowest cost option available (*i.e.*, addition of UV disinfection). EPA then extrapolated costs, based on the percentage of sample facilities (40%) needing additional treatment, to the universe of potentially affected lagoons, and concluded that a total of 113 facilities would probably need to install additional treatment for fecal coliforms. To provide a conservative estimate of costs, EPA assumed that the lagoons needing treatment would be the largest facilities that EPA identified among the facilities potentially affected by provisions of the proposed rule.

However, just prior to EPA's promulgation of this final rule, KDHE provided EPA with an updated inventory reducing the number of potentially affected facilities from 416 to 183 facilities reflecting the narrowed scope of this final rule relative to EPA's July 2000 proposal. Thus, EPA's economic analysis likely overstates the economic impact of this rule.

For a response to the other comments EPA received on its economic analysis of the proposed rule, see the Response to Comments document contained in the administrative record to this rulemaking .

VI. Alternative Regulatory Approaches and Implementation Mechanisms

Data and information may become available after the date of this rulemaking that will be material to water quality standards for Kansas. There are several mechanisms available to ensure that the water quality standards and their implementing mechanisms appropriately take into account such new information. These mechanisms are described in VI. A., B., C., and D.

It is important to remember that two of these mechanisms, designated use changes and site-specific criteria, are modifications to the State's water quality standards. Federal regulations at 40 CFR 122.44(d)(1) require that NPDES permits include limitations necessary to achieve water quality standards adopted under section 303 of the CWA. Therefore, a designated use revised by the State or a site-specific criterion cannot be the basis for NPDES permit limitations until the State has adopted it as part of its water quality standards, has submitted it to EPA, and EPA has approved it. See 40 CFR 131.21(c) & (d). EPA would also need to withdraw any corresponding Federal use designation. As with any other State revision to its water quality standards, EPA will then review these revisions to determine whether they are scientifically defensible in accordance with 40 CFR 131.11(b)(1)(iii), or meet the requirements of 40 CFR 131.10(g), as applicable. EPA will also consider whether the appropriate procedural requirements have been met, such as public participation and certification by the appropriate legal authority within the State. Therefore, Kansas will not be able to employ its designated use changes and site-specific criteria as a basis for NPDES permit limits until Kansas submits and EPA approves them. As noted in EPA's regulations, State water quality standards do not become effective for Clean Water Act purposes until they are approved by EPA. See 40 CFR 131.21. In addition, EPA would also need to withdraw any corresponding Federal use designations.

While 40 CFR 131.13 allows States to adopt variances for State-adopted water quality standards, such variances may not be used for Federally promulgated water quality standards. Consequently, EPA has included in today's rule a Federal variance provision allowing the Region 7 Regional Administrator to grant water quality standards variances where a permittee submits data indicating that an EPA-designated use is not attainable for any of the reasons in 40 CFR 131.10(g). This process is discussed in greater detail in section VI.C. below.

A. Designating Uses

As described throughout this preamble, States have considerable discretion in designating uses. EPA expects that as the State conducts its planned UAAs, it may find that changes in use designations are warranted for some of these water bodies. If Kansas adopts and submits to EPA new use designations for waters bodies subject to today's rule and if EPA approves the State's use designations, EPA will initiate withdrawal of the corresponding use designations promulgated today.

In adopting recreation uses, the State may wish to consider additional categories of recreation uses. For example, Kansas could establish more than one category of primary contact recreation to differentiate between waters where recreation is known to occur and waters where recreation is not known to occur but may be attained based on water quality, flow, and depth characteristics.

EPA cautions the State that it must conduct a use attainability analyses as described in 40 CFR 131.10(g) when adopting water quality standards that result in uses that are not specified in section 101(a)(2) of the CWA, or that result in subcategories of uses specified in section 101(a)(2) that require less stringent criteria. See 40 CFR 131.10(j).

B. Site-Specific Criteria

The State may also develop data that indicate that a site-specific water quality criterion for a particular pollutant is appropriate, and then take action to adopt such a criterion into its water quality standards. Site specific criteria are allowed by regulation and are subject to EPA review and approval. 40 CFR 131.11 requires States to adopt criteria that protect designated uses, that are based on sound scientific rationale, and that contain sufficient parameters or constituents to protect the designated use. In adopting water quality criteria, States should establish numerical values based on EPA's recommended 304(a) criteria guidance, 304(a) criteria guidance modified to reflect site specific conditions, or other scientifically defensible methods, or should establish narrative criteria where numerical criteria cannot be determined or where necessary to supplement narrative criteria.

EPA does not currently have specific guidance for States and authorized Tribes on developing site-specific criteria for the protection of recreation uses. This does not preclude the State from developing its own scientifically defensible methods. With regard to site-specific criteria for the protection of aquatic life, EPA guidance recommends three procedures States and authorized Tribes can consider using: The Recalculation Procedure, the Water-Effect Ratio Procedure and the Resident Species Procedure. These procedures can be found in the *Water Quality Standards Handbook* (EPA–823–B940005a, 1994). EPA also recognizes there may be naturally occurring concentrations of pollutants that may exceed the national criteria recommendations published under section 304(a) of the CWA, and has issued policy guidance on establishing site-specific aquatic life criteria equal to natural background. (Memo from Tudor T. Davies, Director, Office of Science and Technology to the Regional Water Management Division Directors, and State and Tribal Water Quality Management Program Directors, dated November 5, 1997.)

C. Variances

A water quality standards variance is a mechanism that can temporarily modify water quality standards. Today's rule contains a Federal variance procedure for the designated uses being promulgated today. However, the procedures described later in this section can also be used by the State to develop variances for State-adopted water quality standards.

EPA believes variances are particularly suitable when the cause of nonattainment is discharger-specific and it appears that the designated use in question will eventually be attained or demonstrated to be unattainable. EPA has approved the granting of water quality standards variances by States in circumstances that would otherwise justify changing a use designation on the grounds of unattainability (*i.e.*, one or more of the six circumstances contained in 40 CFR 131.10(g) is met). In contrast to a change in standards that removes a use designation for a water body, a water quality standards variance applies only to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability is based, and only for a limited period of time. The underlying standard remains in effect for all other CWA purposes.

For example, if the State or a permittee demonstrates that the primary contact recreation use can not be attained pursuant to 40 CFR 131.10(g) because of high levels of fecal coliforms from a wastewater treatment facility, but where the treatment technology, when upgraded, may allow the designated use to be attained, a temporary variance may be appropriate. The variance would allow the discharger's permit to include limits based on relaxed criteria for fecal coliform until the new technology is put in place and it is determined whether the underlying designated use is attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria, while encouraging ultimate attainment of the underlying standard. A water quality standards variance provides a mechanism for ensuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA, while granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances for Federally adopted standards. EPA believes that it is appropriate to provide comparable Federal procedures where, as here, EPA adopts use designations which rely, at least in part, on a rebuttable presumption that fishable/swimmable uses are attainable or adopts more stringent criteria for the State's use designations. Through today's rule, the Region 7 Regional Administrator may grant water quality standards variances where a permittee submits data indicating that an EPA-designated use is unattainable for any of the reasons in 40 CFR 131.10(g). Therefore, today's rule includes procedures that will apply to the designated uses being promulgated today at § 131.34(a) and (b).

Today's rule spells out the process for applying for and granting such variances. Authorizing the Regional Administrator to grant variances should expedite the processing of variance requests. Today's regulation specifies that EPA will use informal adjudication processes in reviewing and granting variance requests. That process is contained in § 131.34(c) of today's rule. Because water quality standards variances are considered revisions to water quality standards, the rule provides that the Regional Administrator will provide public notice of the proposed variance and provide an opportunity for public comment. EPA understands that variance-related issues can often arise in the context of permit issuance. EPA Region 7 will seek to work closely with the State permitting authorities to ensure that variance requests will be considered in tandem with the State NPDES permitting process.

The variance procedure promulgated today requires an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his/her delegatee) with supporting information. Under this rule, as in the national program, the burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). (These reasons are restated in § 131.34(c)(3) of today's rule.) A variance may not be granted if the use can be attained, at a minimum, by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and the applicant implementing reasonable best management practices for nonpoint source control.

Under today's rule, a variance may not exceed three years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee again demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.34(c)(3) are not met.

EPA solicited comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed, and whether the proposed procedures are sufficiently detailed. EPA received one comment asserting that this process is likely to be cumbersome, expensive, and time consuming. EPA disagrees and believes, as described earlier, that authorizing the Regional Administrator to grant variance requests should expedite the processing of variance requests. EPA will seek to work closely with the State permitting authorities to ensure that variance requests are considered in tandem with the State NPDES permitting process to prevent any unreasonable delay.

D. Total Maximum Daily Loads (TMDLs)

A Total Maximum Daily Load is a tool created by the Clean Water Act that expresses the total amount of a given pollutant that a particular water body may receive and still achieve applicable water quality standards. Section 303(d) of the CWA and its implementing regulations at 40 CFR part 130 establish the requirements for TMDLs. The TMDL process can broaden the opportunity for public participation, expedite water quality-based NPDES permitting, and lead to technically sound and legally defensible decisions for attaining and maintaining water quality standards. In addition, the TMDL process provides a mechanism for integrating the management of both point and nonpoint pollution sources that together may contribute to a water body's impairment. (See *Guidance for Water Quality-based Decisions:,* The TMDL Process, EPA 440–4–91–001, April 1991.)

EPA recognizes that the waters designated today for primary or secondary contact recreation will be subject to water quality criteria for fecal coliforms that had not previously been in place for these waters. The currently effective water quality criterion for fecal coliform adopted by Kansas for the protection of primary contact recreation is a geometric mean of 200 organisms per 100 milliliters from April 1 through October 31, and 2,000 organisms per 100 milliliters from November 1 though March 31. The currently effective water quality criterion for the protection of secondary contact recreation is 2,000 organisms per 100 milliliters all year. EPA further recognizes that because fecal coliform criteria will apply to these waters where previously there was no applicable fecal coliform water quality criteria, it is possible that the State might identify some of the waters as impaired in its CWA section 303(d) list(s) and, therefore, schedule them for TMDL development. This is particularly an issue for streams, because the State's UAAs to date indicate that most of the lakes at issue are appropriately designated for primary contact recreation, but that many of the streams it examined should not be so designated.

As discussed elsewhere in today's notice, EPA strongly encourages the State of Kansas to determine the appropriate uses for all of the waters subject to today's promulgation. Kansas is required by State law to perform use attainability analyses for all water bodies in its *Surface Water Register* by October 31, 2005. EPA expects that Kansas will be able to show that secondary contact recreation is indeed the appropriate use designation for many of the streams subject to today's rule. If, for example, EPA approves the State's adoption of a secondary contact recreation use designation for a water body, and withdraws that water body from the Federal regulation, the State's use designation will be the applicable use for that water body for all CWA purposes, including section 303(d) attainment and listing decisions. In that event, Kansas would be required to list waters included in today's rule under CWA section 303(d) only if data and information show that it exceeds the water quality criterion for fecal coliform for the protection of secondary contact recreation uses.

Similarly, even for waters that are designated for primary contact recreation at the time Kansas assembles its CWA section 303(d) list(s), EPA notes that Kansas need not include a water on its list(s) if it lacks data and information to determine whether the primary contact recreation use is being protected, or if the data and information it has is insufficient to make that determination. See 40 CFR 130.7(b)(5); *2002 Integrated Water Quality Monitoring and Assessment Report Guidance,* at 5 (November 19, 2001). While EPA expects Kansas to follow the requirements, if any, of its assessment and listing methodology, EPA also recognizes that it is possible that at the time Kansas compiles its 2004 CWA section 303(d) list, it will not have data or information indicating impairment for many of the waters designated today for primary contact recreation. Therefore, it is possible that many of these waters will not appear on Kansas' next CWA section 303(d) list.

Even if Kansas does list waters subject to today's rule on its CWA section 303(d) list(s) because data or information indicate that water quality standards are not been achieved, EPA also recognizes that this listing decision does not mean that a TMDL will immediately be developed. Rather, CWA section 303(d)(1) specifically provides States with the discretion to establish a priority ranking for TMDL development for listed waters, and then to establish TMDLs in accordance with that ranking. In view of the fact that by October 31, 2005, Kansas is required by State law to perform use attainability analyses for each water subject to today's rule, EPA believes it would be reasonable for the State to assign a low priority ranking to those waters. If Kansas submits and EPA approves new or revised use designations for a water, and if that use is being protected, then the water would not need to appear on subsequent State CWA section 303(d) lists and no TMDL would be required under section 303(d).

Consequently, because of the State's schedule to conduct additional UAAs and the discretion afforded the State in prioritizing TMDL development, EPA does not believe that TMDLs are likely to be developed for many of these waters in the near future. Finally, EPA notes that even if Kansas establishes a TMDL for a water designated today for primary or secondary contact recreation, the question of implementing the TMDL with respect to nonpoint sources is entirely a matter of State law.

VII. 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 Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to Office of Management and Budget review.

B. Paperwork Reduction Act

This final action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The final rule does not include any information collection, reporting, or recordkeeping requirements.

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 in 40 CFR are listed in 40 CFR part 9.

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 final rule on small entities, a small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (DC Cir. 1996). Today's final rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule,'' United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (DC Cir. 1985) (emphasis added by *United Distribution* court).)

Under the CWA water quality standards program, States must adopt water quality standards for their waters and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate water quality standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in developing discharge limits as needed to meet the standards. While the State's implementation of Federally promulgated water quality standards may result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's final rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Kansas will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in this rule. In doing so, the State will have a number of choices associated with permit writing. While Kansas's implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

D. 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 of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal

governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's 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. The final rule imposes no enforceable duty on the State or any local or Tribal government or the private sector; rather, this rule promulgates designated uses for certain waterbodies in Kansas which, when combined with State-adopted water quality criteria, constitute water quality standards for those water bodies. The State may use these resulting water quality standards in implementing its water quality control programs. Today's final rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The final rule imposes no enforceable requirements on any party, including small governments. Thus, this final rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The final rule will not affect the nature of the relationship between EPA and States generally, for the rule only applies to waterbodies in Kansas. Further, the final rule will not substantially affect the relationship of EPA and the State of Kansas, or the distribution of power or responsibilities between EPA and the various levels of government. The final rule will not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these water quality standards. Further, this final rule will not preclude Kansas from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this final rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local government representatives in developing this rule. EPA had regular communications with KDHE, including KDHE's submission to EPA of over 500 UAAs that EPA considered in developing this rule. In addition, EPA held several meetings and phone calls with representatives from KDHE, other State agencies, and State legislators to discuss any concerns they had regarding the rule's content and EPA's approach to developing the rule. EPA also considered comments submitted by municipalities in its development of today's rule.

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

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

This final rule does not have tribal implications. It 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. In this final action, EPA expressly excludes waters in Indian country. Thus, Executive Order 13175 does not apply to this rule.

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.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule establishes water quality standards to meet the requirements of the CWA and the implementing Federal regulations. As part of its proposed rule, EPA specifically invited the public to submit or identify peer-reviewed studies and data indicating these water quality standards are not adequate to protect children's health. No such comments were received.

H. 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.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, 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 the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective August 6, 2003.

List of Subjects in 40 CFR Part 131

Environmental protection, Indian-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: June 27, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set forth in the preamble, EPA amends 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Section 131.34 is added to read as follows:

§ 131.34 Kansas.

(a) In addition to the State-adopted use designations, the following water body segment in Kansas is designated for an expected aquatic life use:

Stream segment name	HUC8	Segment #	Designated use
Basin: Missouri			
Subbasin: Independence-Sugar			
Whiskey Creek	10240011	235	Expected Aquatic Life.

(b) In addition to the State-adopted use designations, the following water body segments and lakes in Kansas are designated for recreation uses as specified in the following table:

Stream segment name	HUC8	Segment #	Designated use
Basin: Cimarron			
Subbasin: Upper Cimarron-Bluff			
Big Sandy Creek	11040008	6	Primary Contact Recreation
Gyp Creek	11040008	25	Secondary Contact Recreation
Indian Creek	11040008	14	Secondary Contact Recreation
Kiger Creek	11040008	8	Secondary Contact Recreation
Stink Creek	11040008	17	Secondary Contact Recreation
Two Mile Creek	11040008	15	Secondary Contact Recreation
Subbasin: Lower Cimarron-Eagle Chief			
Anderson Creek	11050001	39	Primary Contact Recreation
Basin: Kansas/Lower Republican			
Subbasin: Middle Republican			
Antelope Creek	10250016	66	Secondary Contact Recreation
Ash Creek	10250016	65	Secondary Contact Recreation
Bean Creek	10250016	76	Secondary Contact Recreation
Cora Creek	10250016	51	Secondary Contact Recreation
Crow Creek (Crystal Creek)	10250016	52	Secondary Contact Recreation
Korb Creek	10250016	72	Primary Contact Recreation
Long Branch	10250016	68	Secondary Contact Recreation
Lost Creek	10250016	53	Primary Contact Recreation
Louisa Creek	10250016	61	Secondary Contact Recreation
Norway Creek	10250016	73	Secondary Contact Recreation
Oak Creek	10250016	75	Secondary Contact Recreation
Rebecca Creek	10250016	39	Secondary Contact Recreation
Spring Creek	10250016	71	Secondary Contact Recreation
Spring Creek	10250016	78	Secondary Contact Recreation
Taylor Creek	10250016	74	Secondary Contact Recreation
Walnut Creek	10250016	40	Primary Contact Recreation
Walnut Creek	10250016	46	Secondary Contact Recreation
White Rock Creek, North Branch	10250016	60	Secondary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Wolf Creek	10250016	67	Secondary Contact Recreation
Subbasin: Lower Republican			
Cool Creek	10250017	50	Secondary Contact Recreation
Elm Creek, West Branch	10250017	59	Secondary Contact Recreation
Gar Creek	10250017	12	Primary Contact Recreation
Mud Creek	10250017	63	Secondary Contact Recreation
Turkey Creek	10250017	51	Secondary Contact Recreation
Subbasin: Upper Kansas			
Dry Creek	10270101	19	Primary Contact Recreation
Humbolt Creek	10270101	10	Primary Contact Recreation
Kitten Creek	10270101	14	Primary Contact Recreation
Little Arkansas Creek	10270101	13	Primary Contact Recreation
Little Kitten Creek	10270101	16	Primary Contact Recreation
Mulberry Creek	10270101	20	Secondary Contact Recreation
Subbasin: Middle Kansas			
Adams Creek	10270102	53	Secondary Contact Recreation
Bartlett Creek	10270102	55	Secondary Contact Recreation
Big Elm Creek	10270102	90	Secondary Contact Recreation
Blackjack Creek	10270102	64	Secondary Contact Recreation
Blacksmith Creek	10270102	102	Secondary Contact Recreation
Bourbonais Creek	10270102	63	Primary Contact Recreation
Brush Creek	10270102	57	Primary Contact Recreation
Coal Creek	10270102	46	Secondary Contact Recreation
Coryell Creek	10270102	94	Secondary Contact Recreation
Cow Creek	10270102	45	Secondary Contact Recreation
Crow Creek	10270102	86	Primary Contact Recreation
Darnells Creek	10270102	51	Secondary Contact Recreation
Dog Creek	10270102	78	Secondary Contact Recreation
Doyle Creek	10270102	69	Primary Contact Recreation
Dry Creek	10270102	79	Primary Contact Recreation
Dutch Creek	10270102	92	Secondary Contact Recreation
Elm Creek	10270102	98	Primary Contact Recreation
Elm Creek	10270102	103	Secondary Contact Recreation
Elm Slough	10270102	58	Secondary Contact Recreation
Emmons Creek	10270102	66	Secondary Contact Recreation
French Creek	10270102	19	Primary Contact Recreation
Gilson Creek	10270102	47	Secondary Contact Recreation
Hendricks Creek	10270102	73	Primary Contact Recreation
Hise Creek	10270102	43	Secondary Contact Recreation
Indian Creek	10270102	20	Secondary Contact Recreation
James Creek	10270102	87	Secondary Contact Recreation
Jim Creek	10270102	52	Secondary Contact Recreation
Johnson Creek	10270102	84	Secondary Contact Recreation
Kuenzli Creek	10270102	82	Secondary Contact Recreation
Little Cross Creek	10270102	61	Secondary Contact Recreation
Little Muddy Creek	10270102	99	Primary Contact Recreation
Loire Creek	10270102	80	Primary Contact Recreation
Lost Creek	10270102	60	Secondary Contact Recreation
Messhoss Creek	10270102	96	Primary Contact Recreation
Mud Creek	10270102	44	Secondary Contact Recreation
Mud Creek	10270102	56	Secondary Contact Recreation
Muddy Creek, West Fork	10270102	93	Secondary Contact Recreation
Mulberry Creek	10270102	42	Secondary Contact Recreation
Mulberry Creek	10270102	77	Secondary Contact Recreation
Nehring Creek	10270102	81	Primary Contact Recreation
Paw Paw Creek	10270102	75	Secondary Contact Recreation
Pleasant Hill Run Creek	10270102	23	Primary Contact Recreation
Pomeroy Creek	10270102	59	Secondary Contact Recreation
Post Creek	10270102	101	Secondary Contact Recreation
Pretty Creek	10270102	74	Secondary Contact Recreation
Rock Creek	10270102	21	Primary Contact Recreation
Rock Creek, East Fork	10270102	22	Secondary Contact Recreation
Ross Creek	10270102	35	Secondary Contact Recreation
Salt Creek	10270102	88	Secondary Contact Recreation
Sand Creek	10270102	65	Secondary Contact Recreation
Shunganunga Creek, South Branch	10270102	106	Primary Contact Recreation
Snake Creek	10270102	95	Secondary Contact Recreation
Snokomo Creek	10270102	85	Secondary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Spring Creek	10270102	48	Secondary Contact Recreation
Spring Creek	10270102	54	Primary Contact Recreation
Spring Creek	10270102	76	Secondary Contact Recreation
Spring Creek	10270102	105	Secondary Contact Recreation
Sullivan Creek	10270102	89	Primary Contact Recreation
Tecumseh Creek	10270102	107	Secondary Contact Recreation
Turkey Creek	10270102	71	Primary Contact Recreation
Unnamed Stream	10270102	8	Secondary Contact Recreation
Vassar Creek	10270102	100	Secondary Contact Recreation
Vermillion Creek	10270102	15	Primary Contact Recreation
Walnut Creek	10270102	91	Secondary Contact Recreation
Wells Creek	10270102	68	Secondary Contact Recreation
Whetstone Creek	10270102	104	Secondary Contact Recreation
Wilson Creek	10270102	50	Primary Contact Recreation
Wolf Creek	10270102	49	Primary Contact Recreation
Subbasin: Delaware			
Banner Creek	10270103	45	Secondary Contact Recreation
Barnes Creek	10270103	39	Secondary Contact Recreation
Bills Creek	10270103	47	Secondary Contact Recreation
Brush Creek	10270103	44	Secondary Contact Recreation
Brush Creek	10270103	54	Primary Contact Recreation
Burr Oak Branch	10270103	8	Primary Contact Recreation
Catamount Creek	10270103	49	Primary Contact Recreation
Cedar Creek, North	10270103	46	Primary Contact Recreation
Claywell Creek	10270103	56	Primary Contact Recreation
Clear Creek	10270103	19	Primary Contact Recreation
Coal Creek	10270103	50	Primary Contact Recreation
Grasshopper Creek	10270103	18	Primary Contact Recreation
Grasshopper Creek	10270103	20	Primary Contact Recreation
Gregg Creek	10270103	24	Primary Contact Recreation
Honey Creek	10270103	55	Secondary Contact Recreation
Little Grasshopper Creek	10270103	16	Secondary Contact Recreation
Little Wild Horse Creek	10270103	57	Primary Contact Recreation
Mission Creek	10270103	40	Primary Contact Recreation
Nebo Creek	10270103	48	Secondary Contact Recreation
Negro Creek	10270103	43	Secondary Contact Recreation
Otter Creek	10270103	41	Secondary Contact Recreation
Plum Creek	10270103	36	Secondary Contact Recreation
Rock Creek	10270103	34	Primary Contact Recreation
Rock Creek	10270103	53	Primary Contact Recreation
Spring Creek	10270103	42	Primary Contact Recreation
Squaw Creek	10270103	38	Secondary Contact Recreation
Straight Creek	10270103	28	Secondary Contact Recreation
Tick Creek	10270103	52	Primary Contact Recreation
Unnamed Stream	10270103	31	Secondary Contact Recreation
Walnut Creek	10270103	51	Primary Contact Recreation
Wolfley Creek	10270103	27	Secondary Contact Recreation
Subbasin: Lower Kansas			
Baldwin Creek	10270104	69	Secondary Contact Recreation
Brush Creek	10270104	49	Secondary Contact Recreation
Brush Creek, West	10270104	46	Secondary Contact Recreation
Buttermilk Creek	10270104	44	Secondary Contact Recreation
Camp Creek	10270104	41	Secondary Contact Recreation
Camp Creek	10270104	74	Secondary Contact Recreation
Captain Creek	10270104	72	Primary Contact Recreation
Chicken Creek	10270104	79	Secondary Contact Recreation
Clear Creek	10270104	383	Primary Contact Recreation
Cow Creek	10270104	58	Secondary Contact Recreation
Crooked Creek	10270104	10	Primary Contact Recreation
Crooked Creek	10270104	12	Primary Contact Recreation
Dawson Creek	10270104	45	Secondary Contact Recreation
Elk Creek	10270104	68	Primary Contact Recreation
Full Creek	10270104	52	Primary Contact Recreation
Hanson Creek	10270104	437	Secondary Contact Recreation
Hog Creek	10270104	54	Secondary Contact Recreation
Howard Creek	10270104	43	Secondary Contact Recreation
Hulls Branch	10270104	42	Secondary Contact Recreation
Indian Creek	10270104	48	Secondary Contact Recreation
Jarbalo Creek	10270104	51	Secondary Contact Recreation
Kent Creek	10270104	73	Secondary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Kill Creek	10270104	37	Primary Contact Recreation
Little Cedar Creek	10270104	76	Primary Contact Recreation
Little Mill Creek	10270104	78	Primary Contact Recreation
Little Turkey Creek	10270104	62	Primary Contact Recreation
Little Wakarusa Creek	10270104	71	Primary Contact Recreation
Mission Creek, East	10270104	61	Secondary Contact Recreation
Ninemile Creek	10270104	15	Secondary Contact Recreation
Ninemile Creek	10270104	17	Primary Contact Recreation
Oakley Creek	10270104	56	Secondary Contact Recreation
Plum Creek	10270104	50	Secondary Contact Recreation
Prairie Creek	10270104	47	Secondary Contact Recreation
Rock Creek	10270104	35	Primary Contact Recreation
Scatter Creek	10270104	13	Secondary Contact Recreation
Spoon Creek	10270104	75	Secondary Contact Recreation
Stone Horse Creek	10270104	57	Secondary Contact Recreation
Stranger Creek	10270104	7	Primary Contact Recreation
Stranger Creek	10270104	8	Primary Contact Recreation
Stranger Creek	10270104	9	Primary Contact Recreation
Tonganoxie Creek	10270104	14	Primary Contact Recreation
Tooley Creek	10270104	379	Secondary Contact Recreation
Turkey Creek	10270104	77	Primary Contact Recreation
Unnamed Stream	10270104	11	Primary Contact Recreation
Unnamed Stream	10270104	16	Secondary Contact Recreation
Wakarusa River, Middle Branch	10270104	64	Secondary Contact Recreation
Wakarusa River, South Branch	10270104	63	Primary Contact Recreation
Washington Creek	10270104	36	Primary Contact Recreation
Yankee Tank Creek	10270104	70	Primary Contact Recreation
Subbasin: Lower Big Blue			
Ackerman Creek	10270205	49	Secondary Contact Recreation
Black Vermillion River, Clear Fork	10270205	9	Primary Contact Recreation
Black Vermillion River, North Fork	10270205	15	Secondary Contact Recreation
Black Vermillion River, South Fork	10270205	12	Secondary Contact Recreation
Bluff Creek	10270205	573	Primary Contact Recreation
Bommer Creek	10270205	40	Secondary Contact Recreation
Busksnort Creek	10270205	566	Secondary Contact Recreation
Carter Creek	10270205	59	Secondary Contact Recreation
Cedar Creek	10270205	56	Secondary Contact Recreation
Corndodger Creek	10270205	52	Primary Contact Recreation
De Shazer Creek	10270205	55	Secondary Contact Recreation
Deadman Creek	10270205	60	Secondary Contact Recreation
Deer Creek	10270205	36	Secondary Contact Recreation
Dog Walk Creek	10270205	53	Secondary Contact Recreation
Dutch Creek	10270205	44	Primary Contact Recreation
Elm Creek	10270205	46	Secondary Contact Recreation
Elm Creek, North	10270205	41	Secondary Contact Recreation
Fancy Creek, North Fork	10270205	61	Secondary Contact Recreation
Fancy Creek, West	10270205	29	Primary Contact Recreation
Game Fork	10270205	54	Secondary Contact Recreation
Hop Creek	10270205	43	Secondary Contact Recreation
Indian Creek	10270205	37	Secondary Contact Recreation
Jim Creek	10270205	57	Secondary Contact Recreation
Johnson Fork	10270205	51	Secondary Contact Recreation
Kearney Branch	10270205	58	Secondary Contact Recreation
Lily Creek	10270205	39	Secondary Contact Recreation
Little Indian Creek	10270205	35	Secondary Contact Recreation
Little Timber Creek	10270205	48	Primary Contact Recreation
Meadow Creek	10270205	34	Secondary Contact Recreation
Mission Creek	10270205	22	Primary Contact Recreation
Murdock Creek	10270205	42	Secondary Contact Recreation
Otter Creek	10270205	67	Secondary Contact Recreation
Otter Creek, North	10270205	62	Primary Contact Recreation
Perkins Creek	10270205	47	Secondary Contact Recreation
Phiel Creek	10270205	68	Primary Contact Recreation
Raemer Creek	10270205	33	Primary Contact Recreation
Robidoux Creek	10270205	16	Primary Contact Recreation
Schell Creek	10270205	45	Primary Contact Recreation
School Branch	10270205	63	Secondary Contact Recreation
Scotch Creek	10270205	38	Secondary Contact Recreation
Spring Creek	10270205	19	Primary Contact Recreation
Spring Creek	10270205	65	Primary Contact Recreation
Timber Creek	10270205	64	Primary Contact Recreation
Weyer Creek	10270205	50	Secondary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Subbasin: Upper Little Blue			
Dry Creek	10270206	41	Secondary Contact Recreation
Subbasin: Lower Little Blue			
Ash Creek	10270207	36	Secondary Contact Recreation
Beaver Creek	10270207	38	Secondary Contact Recreation
Bolling Creek	10270207	42	Secondary Contact Recreation
Bowman Creek	10270207	21	Secondary Contact Recreation
Buffalo Creek	10270207	32	Secondary Contact Recreation
Camp Creek	10270207	35	Secondary Contact Recreation
Camp Creek	10270207	44	Primary Contact Recreation
Cedar Creek	10270207	40	Secondary Contact Recreation
Cherry Creek	10270207	25	Secondary Contact Recreation
Coon Creek	10270207	23	Primary Contact Recreation
Fawn Creek	10270207	45	Secondary Contact Recreation
Gray Branch	10270207	27	Secondary Contact Recreation
Humphrey Branch	10270207	24	Secondary Contact Recreation
Iowa Creek	10270207	34	Secondary Contact Recreation
Jones Creek	10270207	29	Secondary Contact Recreation
Joy Creek	10270207	13	Secondary Contact Recreation
Lane Branch	10270207	39	Secondary Contact Recreation
Malone Creek	10270207	37	Secondary Contact Recreation
Melvin Creek	10270207	33	Secondary Contact Recreation
Mercer Creek	10270207	43	Primary Contact Recreation
Mill Creek, South Fork	10270207	31	Secondary Contact Recreation
Myer Creek	10270207	26	Secondary Contact Recreation
Riddle Creek	10270207	17	Secondary Contact Recreation
Rose Creek	10270207	12	Secondary Contact Recreation
Salt Creek	10270207	19	Primary Contact Recreation
School Creek	10270207	49	Primary Contact Recreation
Silver Creek	10270207	28	Primary Contact Recreation
Spring Creek	10270207	15	Secondary Contact Recreation
Spring Creek	10270207	30	Secondary Contact Recreation
Walnut Creek	10270207	41	Primary Contact Recreation
Basin: Lower Arkansas			
Subbasin: Rattlesnake			
Spring Creek	11030009	7	Secondary Contact Recreation
Subbasin: Gar-Peace			
Gar Creek	11030010	8	Primary Contact Recreation
Subbasin: Cow			
Blood Creek	11030011	15	Secondary Contact Recreation
Deception Creek	11030011	13	Secondary Contact Recreation
Dry Creek	11030011	22	Primary Contact Recreation
Jarvis Creek	11030011	19	Primary Contact Recreation
Little Cheyenne Creek	11030011	7	Primary Contact Recreation
Little Cow Creek	11030011	2	Primary Contact Recreation
Lost Creek	11030011	17	Secondary Contact Recreation
Owl Creek	11030011	18	Primary Contact Recreation
Plum Creek	11030011	4	Secondary Contact Recreation
Salt Creek	11030011	21	Primary Contact Recreation
Spring Creek	11030011	20	Secondary Contact Recreation
Subbasin: Little Arkansas			
Beaver Creek	11030012	26	Primary Contact Recreation
Bull Creek	11030012	24	Primary Contact Recreation
Dry Creek	11030012	22	Secondary Contact Recreation
Dry Turkey Creek	11030012	13	Primary Contact Recreation
Emma Creek	11030012	6	Primary Contact Recreation
Emma Creek	11030012	7	Primary Contact Recreation
Emma Creek, West	11030012	8	Primary Contact Recreation
Gooseberry Creek	11030012	17	Primary Contact Recreation
Horse Creek	11030012	19	Primary Contact Recreation
Jester Creek	11030012	2	Primary Contact Recreation
Jester Creek, East Fork	11030012	18	Primary Contact Recreation
Kisiwa Creek	11030012	15	Secondary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Lone Tree Creek	11030012	20	Secondary Contact Recreation
Mud Creek	11030012	16	Primary Contact Recreation
Running Turkey Creek	11030012	25	Secondary Contact Recreation
Salt Creek	11030012	21	Primary Contact Recreation
Sun Creek	11030012	11	Primary Contact Recreation
Turkey Creek	11030012	12	Secondary Contact Recreation
Subbasin: Middle Arkansas—Slate			
Antelope Creek	11030013	25	Primary Contact Recreation
Badger Creek	11030013	31	Primary Contact Recreation
Beaver Creek	11030013	29	Primary Contact Recreation
Beaver Creek	11030013	33	Primary Contact Recreation
Big Slough	11030013	11	Primary Contact Recreation
Big Slough, South Fork	11030013	35	Primary Contact Recreation
Bitter Creek	11030013	28	Primary Contact Recreation
Dry Creek	11030013	15	Primary Contact Recreation
Dry Creek	11030013	16	Primary Contact Recreation
Gypsum Creek	11030013	5	Primary Contact Recreation
Hargis Creek	11030013	24	Primary Contact Recreation
Lost Creek	11030013	23	Primary Contact Recreation
Negro Creek	11030013	20	Primary Contact Recreation
Oak Creek	11030013	26	Secondary Contact Recreation
Salt Creek	11030013	22	Primary Contact Recreation
Spring Creek	11030013	19	Primary Contact Recreation
Spring Creek	11030013	21	Primary Contact Recreation
Spring Creek	11030013	27	Primary Contact Recreation
Spring Creek	11030013	34	Primary Contact Recreation
Spring Creek	11030013	37	Primary Contact Recreation
Winser Creek	11030013	32	Primary Contact Recreation
Subbasin: North Fork Ninnescah			
Crow Creek	11030014	11	Primary Contact Recreation
Dooleyville Creek	11030014	8	Primary Contact Recreation
Goose Creek	11030014	10	Primary Contact Recreation
Ninnescah River, North Fork	11030014	1	Primary Contact Recreation
Ninnescah River, North Fork	11030014	5	Primary Contact Recreation
Ninnescah River, North Fork	11030014	6	Primary Contact Recreation
Red Rock Creek	11030014	12	Primary Contact Recreation
Rock Creek	11030014	13	Primary Contact Recreation
Silver Creek	11030014	7	Primary Contact Recreation
Spring Creek	11030014	14	Primary Contact Recreation
Wolf Creek	11030014	9	Primary Contact Recreation
Subbasin: South Fork Ninnescah			
Coon Creek	11030015	9	Primary Contact Recreation
Coon Creek	11030015	17	Primary Contact Recreation
Hunter Creek	11030015	14	Primary Contact Recreation
Mead Creek	11030015	10	Primary Contact Recreation
Mod Creek	11030015	19	Primary Contact Recreation
Natrona Creek	11030015	K38	Primary Contact Recreation
Negro Creek	11030015	13	Primary Contact Recreation
Nester Creek	11030015	15	Primary Contact Recreation
Ninnescah River, West Branch South Fork	11030015	5	Primary Contact Recreation
Painter Creek	11030015	7	Primary Contact Recreation
Pat Creek	11030015	11	Primary Contact Recreation
Petyt Creek	11030015	12	Primary Contact Recreation
Sand Creek	11030015	18	Primary Contact Recreation
Spring Creek	11030015	8	Primary Contact Recreation
Wild Run Creek	11030015	16	Primary Contact Recreation
Subbasin: Ninnescah			
Afton Creek	11030016	5	Primary Contact Recreation
Clearwater Creek	11030016	4	Primary Contact Recreation
Clearwater Creek	11030016	7	Primary Contact Recreation
Dry Creek	11030016	16	Primary Contact Recreation
Elm Creek	11030016	10	Primary Contact Recreation
Garvey Creek	11030016	11	Primary Contact Recreation
Sand Creek	11030016	14	Primary Contact Recreation
Silver Creek	11030016	12	Primary Contact Recreation
Spring Creek	11030016	2	Primary Contact Recreation
Spring Creek	11030016	15	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Turtle Creek	11030016	13	Primary Contact Recreation
Subbasin: Kaw Lake			
Blue Branch	11060001	30	Primary Contact Recreation
Bullington Creek	11060001	28	Primary Contact Recreation
Cedar Creek	11060001	32	Primary Contact Recreation
Chilocco Creek	11060001	19	Primary Contact Recreation
Crabb Creek	11060001	29	Primary Contact Recreation
Ferguson Creek	11060001	38	Primary Contact Recreation
Franklin Creek	11060001	35	Primary Contact Recreation
Gardners Branch	11060001	39	Primary Contact Recreation
Goose Creek	11060001	34	Primary Contact Recreation
Myers Creek	11060001	24	Primary Contact Recreation
Otter Creek	11060001	20	Primary Contact Recreation
Pebble Creek	11060001	26	Primary Contact Recreation
Plum Creek	11060001	33	Primary Contact Recreation
Riley Creek	11060001	37	Primary Contact Recreation
School Creek	11060001	31	Primary Contact Recreation
Shellrock Creek	11060001	22	Primary Contact Recreation
Silver Creek	11060001	17	Primary Contact Recreation
Snake Creek	11060001	25	Primary Contact Recreation
Spring Creek	11060001	21	Primary Contact Recreation
Turkey Creek	11060001	27	Primary Contact Recreation
Wagoner Creek	11060001	36	Primary Contact Recreation
Subbasin: Upper Salt Fork Arkansas			
Ash Creek	11060002	20	Primary Contact Recreation
Big Sandy Creek	11060002	5	Primary Contact Recreation
Cave Creek	11060002	28	Primary Contact Recreation
Deadman Creek	11060002	22	Primary Contact Recreation
Dog Creek	11060002	29	Primary Contact Recreation
Hackberry Creek	11060002	23	Primary Contact Recreation
Indian Creek	11060002	9	Primary Contact Recreation
Inman Creek	11060002	21	Primary Contact Recreation
Mustang Creek	11060002	31	Primary Contact Recreation
Nescatunga Creek, East Branch	11060002	27	Primary Contact Recreation
Red Creek	11060002	16	Primary Contact Recreation
Spring Creek	11060002	24	Primary Contact Recreation
Wildcat Creek	11060002	12	Primary Contact Recreation
Yellowstone Creek	11060002	17	Primary Contact Recreation
Subbasin: Medicine Lodge			
Amber Creek	11060003	12	Primary Contact Recreation
Antelope Creek	11060003	22	Primary Contact Recreation
Bear Creek	11060003	13	Secondary Contact Recreation
Bitter Creek	11060003	18	Secondary Contact Recreation
Cedar Creek	11060003	20	Primary Contact Recreation
Cottonwood Creek	11060003	16	Primary Contact Recreation
Crooked Creek	11060003	11	Primary Contact Recreation
Litle Mule Creek	11060003	9	Primary Contact Recreation
Dry Creek	11060003	21	Secondary Contact Recreation
Elm Creek, East Branch South	11060003	10	Primary Contact Recreation
Elm Creek, North Branch	11060003	4	Primary Contact Recreation
Elm Creek, South Branch	11060003	5	Primary Contact Recreation
Little Bear Creek	11060003	19	Primary Contact Recreation
Medicine Lodge River, North Branch	11060003	24	Secondary Contact Recreation
Mulberry Creek	11060003	14	Primary Contact Recreation
Otter Creek	11060003	25	Secondary Contact Recreation
Puckett Creek	11060003	15	Primary Contact Recreation
Sand Creek	11060003	17	Primary Contact Recreation
Soldier Creek	11060003	27	Secondary Contact Recreation
Stink Creek	11060003	28	Primary Contact Recreation
Turkey Creek	11060003	7	Primary Contact Recreation
Wilson Slough	11060003	23	Primary Contact Recreation
Subbasin: Lower Salt Fork Arkansas			
Camp Creek	11060004	68	Primary Contact Recreation
Cooper Creek	11060004	71	Primary Contact Recreation
Crooked Creek	11060004	24	Primary Contact Recreation
Little Sandy Creek	11060004	39	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Little Sandy Creek, East Branch	11060004	65	Primary Contact Recreation
Osage Creek	11060004	17	Primary Contact Recreation
Plum Creek	11060004	70	Primary Contact Recreation
Pond Creek	11060004	18	Primary Contact Recreation
Rush Creek	11060004	69	Primary Contact Recreation
Salty Creek	11060004	40	Primary Contact Recreation
Sandy Creek	11060004	37	Primary Contact Recreation
Sandy Creek, West	11060004	56	Primary Contact Recreation
Spring Creek	11060004	66	Primary Contact Recreation
Unnamed Stream	11060004	25	Primary Contact Recreation
Subbasin: Chikaskia			
Allen Creek	11060005	40	Primary Contact Recreation
Baehr Creek	11060005	22	Primary Contact Recreation
Beaver Creek	11060005	28	Primary Contact Recreation
Beaver Creek	11060005	46	Primary Contact Recreation
Big Spring Creek	11060005	34	Primary Contact Recreation
Bitter Creek	11060005	4	Primary Contact Recreation
Bitter Creek, East	11060005	16	Primary Contact Recreation
Blue Stem Creek	11060005	48	Primary Contact Recreation
Chicken Creek	11060005	36	Primary Contact Recreation
Copper Creek	11060005	42	Primary Contact Recreation
Dry Creek	11060005	17	Primary Contact Recreation
Duck Creek	11060005	32	Primary Contact Recreation
Fall Creek	11060005	14	Primary Contact Recreation
Fall Creek, East Branch	11060005	27	Primary Contact Recreation
Goose Creek	11060005	38	Primary Contact Recreation
Kemp Creek	11060005	49	Primary Contact Recreation
Long Creek	11060005	529	Primary Contact Recreation
Meridian Creek	11060005	20	Primary Contact Recreation
Prairie Creek	11060005	512	Primary Contact Recreation
Prairie Creek, East	11060005	516	Primary Contact Recreation
Prairie Creek, West	11060005	527	Primary Contact Recreation
Red Creek	11060005	43	Primary Contact Recreation
Rock Creek	11060005	23	Primary Contact Recreation
Rodgers Branch	11060005	26	Primary Contact Recreation
Rose Bud Creek	11060005	44	Primary Contact Recreation
Rush Creek	11060005	45	Primary Contact Recreation
Sand Creek	11060005	11	Primary Contact Recreation
Sand Creek, East	11060005	12	Primary Contact Recreation
Sandy Creek	11060005	30	Primary Contact Recreation
Shoo Fly Creek, East	11060005	19	Secondary Contact Recreation
Shore Creek	11060005	35	Primary Contact Recreation
Silver Creek	11060005	29	Primary Contact Recreation
Skunk Creek	11060005	39	Primary Contact Recreation
Spring Branch	11060005	21	Primary Contact Recreation
Wild Horse Creek	11060005	41	Primary Contact Recreation
Wildcat Creek	11060005	24	Primary Contact Recreation
Basin: Marais Des Cygnes			
Subbasin: Upper Marais Des Cygnes			
Appanoose Creek	10290101	16	Primary Contact Recreation
Appanoose Creek, East	10290101	89	Primary Contact Recreation
Batch Creek	10290101	86	Primary Contact Recreation
Blue Creek	10290101	81	Primary Contact Recreation
Bradshaw Creek	10290101	75	Primary Contact Recreation
Cedar Creek	10290101	66	Primary Contact Recreation
Cherry Creek	10290101	74	Primary Contact Recreation
Chicken Creek	10290101	70	Primary Contact Recreation
Chicken Creek	10290101	93	Primary Contact Recreation
Coal Creek	10290101	48	Primary Contact Recreation
Dry Creek	10290101	57	Primary Contact Recreation
Dry Creek	10290101	95	Primary Contact Recreation
Duck Creek	10290101	41	Primary Contact Recreation
Eightmile Creek	10290101	13	Primary Contact Recreation
Frog Creek	10290101	42	Primary Contact Recreation
Hard Fish Creek	10290101	47	Primary Contact Recreation
Hickory Creek	10290101	8	Primary Contact Recreation
Hill Creek	10290101	71	Primary Contact Recreation
Iantha Creek	10290101	62	Primary Contact Recreation
Jersey Creek	10290101	76	Primary Contact Recreation
Kenoma Creek	10290101	64	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Little Rock Creek	10290101	73	Primary Contact Recreation
Long Creek	10290101	K36	Primary Contact Recreation
Locust Creek	10290101	69	Primary Contact Recreation
Middle Creek	10290101	50	Primary Contact Recreation
Mosquito Creek	10290101	52	Primary Contact Recreation
Mud Creek	10290101	49	Primary Contact Recreation
Mud Creek	10290101	78	Primary Contact Recreation
Mud Creek	10290101	91	Primary Contact Recreation
Mute Creek	10290101	92	Primary Contact Recreation
Ottawa Creek	10290101	K25	Primary Contact Recreation
Plum Creek	10290101	2	Primary Contact Recreation
Plum Creek	10290101	79	Primary Contact Recreation
Popcorn Creek	10290101	87	Primary Contact Recreation
Pottawatomie Creek, North Fork	10290101	65	Primary Contact Recreation
Pottawatomie Creek, South Fork	10290101	67	Primary Contact Recreation
Rock Creek	10290101	43	Primary Contact Recreation
Rock Creek	10290101	97	Primary Contact Recreation
Sac Branch, South Fork	10290101	54	Secondary Contact Recreation
Sac Creek	10290101	60	Primary Contact Recreation
Salt Creek	10290101	29	Primary Contact Recreation
Sand Creek	10290101	82	Primary Contact Recreation
Smith Creek	10290101	77	Primary Contact Recreation
Spring Creek	10290101	84	Primary Contact Recreation
Switzler Creek	10290101	80	Primary Contact Recreation
Tauy Creek	10290101	11	Primary Contact Recreation
Tauy Creek, West Fork	10290101	K26	Primary Contact Recreation
Tequa Creek	10290101	44	Primary Contact Recreation
Tequa Creek, East Branch	10290101	46	Primary Contact Recreation
Tequa Creek, South Branch	10290101	45	Primary Contact Recreation
Thomas Creek	10290101	72	Secondary Contact Recreation
Turkey Creek	10290101	4	Primary Contact Recreation
Turkey Creek	10290101	6	Primary Contact Recreation
Unnamed Stream	10290101	5	Primary Contact Recreation
Walnut Creek	10290101	90	Primary Contact Recreation
West Fork Eight Mile Creek	10290101	88	Primary Contact Recreation
Willow Creek	10290101	94	Primary Contact Recreation
Wilson Creek	10290101	83	Primary Contact Recreation
Wolf Creek	10290101	96	Primary Contact Recreation
Subbasin: Lower Marais Des Cygnes			
Buck Creek	10290102	44	Primary Contact Recreation
Bull Creek	10290102	26	Secondary Contact Recreation
Davis Creek	10290102	38	Primary Contact Recreation
Dorsey Creek	10290102	22	Primary Contact Recreation
Elm Branch	10290102	48	Primary Contact Recreation
Elm Branch	10290102	53	Primary Contact Recreation
Elm Creek	10290102	40	Primary Contact Recreation
Hushpuckney Creek	10290102	37	Primary Contact Recreation
Jake Branch	10290102	54	Secondary Contact Recreation
Jordan Branch	10290102	36	Primary Contact Recreation
Little Bull Creek	10290102	51	Primary Contact Recreation
Little Sugar Creek	10290102	33	Primary Contact Recreation
Little Sugar Creek, North Fork	10290102	43	Primary Contact Recreation
Martin Creek	10290102	26	Primary Contact Recreation
Middle Creek	10290102	13	Primary Contact Recreation
Middle Creek	10290102	30	Primary Contact Recreation
Mound Creek	10290102	35	Primary Contact Recreation
Richland Creek	10290102	41	Primary Contact Recreation
Rock Creek	10290102	27	Primary Contact Recreation
Smith Branch	10290102	47	Primary Contact Recreation
Spring Creek	10290102	50	Primary Contact Recreation
Sugar Creek	10290102	42	Primary Contact Recreation
Turkey Creek	10290102	45	Primary Contact Recreation
Walnut Creek	10290102	14	Primary Contact Recreation
Walnut Creek	10290102	34	Primary Contact Recreation
Walnut Creek	10290102	52	Primary Contact Recreation
Wea Creek, North	10290102	21	Primary Contact Recreation
Wea Creek, South	10290102	18	Primary Contact Recreation
Wea Creek, South	10290102	19	Primary Contact Recreation
Wea Creek, South	10290102	20	Primary Contact Recreation
Subbasin: Little Osage			
Clever Creek	10290103	7	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Elk Creek	10290103	11	Primary Contact Recreation
Fish Creek	10290103	8	Primary Contact Recreation
Indian Creek	10290103	12	Primary Contact Recreation
Irish Creek	10290103	9	Primary Contact Recreation
Laberdie Creek, East	10290103	13	Primary Contact Recreation
Limestone Creek	10290103	5	Primary Contact Recreation
Lost Creek	10290103	10	Primary Contact Recreation
Reagan Branch	10290103	6	Primary Contact Recreation
Subbasin: Marmaton			
Buck Run	10290104	46	Primary Contact Recreation
Bunion Creek	10290104	39	Primary Contact Recreation
Cedar Creek	10290104	41	Primary Contact Recreation
Drywood Creek, Moores Branch	10290104	17	Primary Contact Recreation
Drywood Creek, West Fork	10290104	19	Primary Contact Recreation
Elm Creek	10290104	15	Secondary Contact Recreation
Hinton Creek	10290104	38	Primary Contact Recreation
Lath Branch	10290104	42	Primary Contact Recreation
Little Mill Creek	10290104	34	Primary Contact Recreation
Mill Creek	10290104	6	Primary Contact Recreation
Owl Creek	10290104	45	Primary Contact Recreation
Paint Creek	10290104	13	Primary Contact Recreation
Paint Creek	10290104	14	Primary Contact Recreation
Prong Creek	10290104	44	Secondary Contact Recreation
Robinson Branch	10290104	40	Primary Contact Recreation
Shiloh Creek	10290104	36	Primary Contact Recreation
Sweet Branch	10290104	30	Primary Contact Recreation
Tennyson Creek	10290104	31	Primary Contact Recreation
Turkey Creek	10290104	33	Primary Contact Recreation
Walnut Creek	10290104	32	Primary Contact Recreation
Walnut Creek	10290104	47	Primary Contact Recreation
Wolfpen Creek	10290104	37	Primary Contact Recreation
Wolverine Creek	10290104	35	Primary Contact Recreation
Subbasin: South Grand			
Harless Creek	10290108	67	Primary Contact Recreation
Poney Creek	10290108	48	Primary Contact Recreation
Basin: Missouri			
Subbasin: Tarkio-Wolf			
Cold Ryan Branch	10240005	70	Primary Contact Recreation
Coon Creek	10240005	71	Primary Contact Recreation
Halling Creek	10240005	68	Primary Contact Recreation
Mill Creek	10240005	52	Primary Contact Recreation
Rittenhouse Branch	10240005	69	Primary Contact Recreation
Spring Creek	10240005	65	Primary Contact Recreation
Striker Branch	10240005	72	Primary Contact Recreation
Wolf River, Middle Fork	10240005	67	Primary Contact Recreation
Wolf River, North Fork	10240005	66	Primary Contact Recreation
Wolf River, South Fork	10240005	57	Primary Contact Recreation
Unnamed Stream	10240005	55	Primary Contact Recreation
Subbasin: South Fork Big Nemaha			
Burger Creek	10240007	24	Secondary Contact Recreation
Deer Creek	10240007	18	Primary Contact Recreation
Fisher Creek	10240007	28	Primary Contact Recreation
Illinois Creek	10240007	30	Primary Contact Recreation
Rattlesnake Creek	10240007	27	Primary Contact Recreation
Rock Creek	10240007	20	Primary Contact Recreation
Tennessee Creek	10240007	29	Primary Contact Recreation
Turkey Creek	10240007	4	Primary Contact Recreation
Turkey Creek	10240007	5	Primary Contact Recreation
Wildcat Creek	10240007	23	Primary Contact Recreation
Wildcat Creek	10240007	22	Primary Contact Recreation
Wolf Pen Creek	10240007	25	Primary Contact Recreation
Subbasin: Big Nemaha			
Noharts Creek	10240008	42	Primary Contact Recreation
Pedee Creek	10240008	41	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Pony Creek	10240008	38	Primary Contact Recreation
Roys Creek	10240008	40	Primary Contact Recreation
Subbasin: Independence—Sugar			
Brush Creek	10240011	26	Primary Contact Recreation
Deer Creek	10240011	32	Primary Contact Recreation
Fivemile Creek	10240011	35	Primary Contact Recreation
Independence Creek, North Branch	10240011	29	Primary Contact Recreation
Jordan Creek	10240011	30	Primary Contact Recreation
Owl Creek	10240011	33	Primary Contact Recreation
Rock Creek	10240011	21	Primary Contact Recreation
Salt Creek	10240011	34	Primary Contact Recreation
Smith Creek	10240011	28	Primary Contact Recreation
Three Mile Creek	10240011	36	Primary Contact Recreation
Walnut Creek	10240011	23	Primary Contact Recreation
Walnut Creek	10240011	25	Primary Contact Recreation
White Clay Creek	10240011	31	Primary Contact Recreation
White Clay Creek	10240011	9031	Primary Contact Recreation
Whiskey Creek	10240011	235	Primary Contact Recreation
Whiskey Creek	10240011	9235	Primary Contact Recreation
Subbasin: Lower Missouri—Crooked			
Brush Creek	10300101	54	Primary Contact Recreation
Camp Branch	10300101	56	Primary Contact Recreation
Coffee Creek	10300101	57	Primary Contact Recreation
Dyke Branch	10300101	55	Primary Contact Recreation
Indian Creek	10300101	32	Primary Contact Recreation
Negro Creek	10300101	58	Primary Contact Recreation
Tomahawk Creek	10300101	53	Primary Contact Recreation
Basin: Neosho			
Subbasin: Neosho Headwaters			
Allen Creek	11070201	5	Primary Contact Recreation
Badger Creek	11070201	45	Primary Contact Recreation
Big John Creek	11070201	37	Primary Contact Recreation
Bluff Creek	11070201	8	Primary Contact Recreation
Crooked Creek	11070201	35	Primary Contact Recreation
Dows Creek	11070201	3	Primary Contact Recreation
Dows Creek	11070201	4	Primary Contact Recreation
Eagle Creek	11070201	25	Primary Contact Recreation
Eagle Creek, South	11070201	47	Primary Contact Recreation
East Creek	11070201	39	Primary Contact Recreation
Elm Creek	11070201	36	Primary Contact Recreation
Fourmile Creek	11070201	24	Primary Contact Recreation
Fourmile Creek	11070201	48	Primary Contact Recreation
Haun Creek	11070201	29	Primary Contact Recreation
Horse Creek	11070201	33	Primary Contact Recreation
Kahola Creek	11070201	43	Primary Contact Recreation
Lairds Creek	11070201	30	Primary Contact Recreation
Lanos Creek	11070201	21	Primary Contact Recreation
Lebo Creek	11070201	51	Primary Contact Recreation
Munkers Creek, East Branch	11070201	31	Primary Contact Recreation
Munkers Creek, Middle Branch	11070201	32	Primary Contact Recreation
Neosho River, East Fork	11070201	18	Primary Contact Recreation
Neosho River, West Fork	11070201	28	Primary Contact Recreation
Parkers Creek	11070201	27	Primary Contact Recreation
Plum Creek	11070201	50	Primary Contact Recreation
Plumb Creek	11070201	49	Primary Contact Recreation
Rock Creek	11070201	7	Primary Contact Recreation
Rock Creek	11070201	9	Primary Contact Recreation
Rock Creek, East Branch	11070201	34	Primary Contact Recreation
Spring Creek	11070201	40	Primary Contact Recreation
Stillman Creek	11070201	44	Primary Contact Recreation
Taylor Creek	11070201	46	Primary Contact Recreation
Walker Branch	11070201	42	Primary Contact Recreation
Wolf Creek	11070201	41	Primary Contact Recreation
Wrights Creek	11070201	38	Primary Contact Recreation
Subbasin: Upper Cottonwood			
Antelope Creek	11070202	19	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Bills Creek	11070202	30	Primary Contact Recreation
Bruno Creek	11070202	27	Primary Contact Recreation
Catlin Creek	11070202	20	Primary Contact Recreation
Clear Creek	11070202	5	Primary Contact Recreation
Clear Creek, East Branch	11070202	24	Primary Contact Recreation
Coon Creek	11070202	32	Primary Contact Recreation
Cottonwood River, South	11070202	17	Primary Contact Recreation
Cottonwood River, South	11070202	18	Primary Contact Recreation
Doyle Creek	11070202	21	Primary Contact Recreation
French Creek	11070202	16	Primary Contact Recreation
Mud Creek	11070202	6	Primary Contact Recreation
Perry Creek	11070202	23	Primary Contact Recreation
Spring Branch	11070202	26	Primary Contact Recreation
Spring Creek	11070202	28	Primary Contact Recreation
Spring Creek	11070202	29	Primary Contact Recreation
Stony Brook	11070202	25	Primary Contact Recreation
Turkey Creek	11070202	31	Primary Contact Recreation
Subbasin: Lower Cottonwood			
Beaver Creek	11070203	29	Primary Contact Recreation
Bloody Creek	11070203	40	Primary Contact Recreation
Buck Creek	11070203	39	Primary Contact Recreation
Buckeye Creek	11070203	44	Primary Contact Recreation
Bull Creek	11070203	26	Primary Contact Recreation
Camp Creek	11070203	14	Primary Contact Recreation
Coal Creek	11070203	43	Primary Contact Recreation
Collett Creek	11070203	21	Primary Contact Recreation
Corn Creek	11070203	47	Primary Contact Recreation
Coyne Branch	11070203	33	Primary Contact Recreation
Crocker Creek	11070203	46	Primary Contact Recreation
Dodds Creek	11070203	15	Primary Contact Recreation
Fox Creek	11070203	19	Primary Contact Recreation
French Creek	11070203	32	Primary Contact Recreation
Gannon Creek	11070203	24	Primary Contact Recreation
Gould Creek	11070203	36	Primary Contact Recreation
Holmes Creek	11070203	35	Primary Contact Recreation
Jacob Creek	11070203	28	Primary Contact Recreation
Kirk Creek	11070203	48	Primary Contact Recreation
Little Cedar Creek	11070203	11	Primary Contact Recreation
Little Cedar Creek	11070203	45	Primary Contact Recreation
Middle Creek	11070203	5	Primary Contact Recreation
Mile-and-a-half Creek	11070203	13	Secondary Contact Recreation
Moon Creek	11070203	31	Primary Contact Recreation
Mulvane Creek	11070203	22	Primary Contact Recreation
Peyton Creek	11070203	25	Primary Contact Recreation
Phenis Creek	11070203	30	Primary Contact Recreation
Pickett Creek	11070203	18	Primary Contact Recreation
Prather Creek	11070203	23	Primary Contact Recreation
Rock Creek	11070203	37	Primary Contact Recreation
Schaffer Creek	11070203	17	Primary Contact Recreation
School Creek	11070203	16	Primary Contact Recreation
Sharpes Creek	11070203	38	Primary Contact Recreation
Silver Creek	11070203	34	Primary Contact Recreation
Spring Creek	11070203	41	Primary Contact Recreation
Stout Run	11070203	27	Primary Contact Recreation
Stribby Creek	11070203	20	Primary Contact Recreation
Subbasin: Upper Neosho			
Badger Creek	11070204	42	Primary Contact Recreation
Big Creek, North	11070204	16	Primary Contact Recreation
Big Creek, South	11070204	17	Primary Contact Recreation
Bloody Run	11070204	25	Primary Contact Recreation
Carlyle Creek	11070204	47	Primary Contact Recreation
Charles Branch	11070204	27	Primary Contact Recreation
Cherry Creek	11070204	20	Primary Contact Recreation
Coal Creek	11070204	4	Primary Contact Recreation
Cottonwood Creek	11070204	48	Primary Contact Recreation
Crooked Creek	11070204	44	Primary Contact Recreation
Draw Creek	11070204	34	Primary Contact Recreation
Goose Creek	11070204	29	Primary Contact Recreation
Long Creek	11070204	12	Primary Contact Recreation
Martin Creek	11070204	49	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Mud Creek	11070204	26	Primary Contact Recreation
Mud Creek	11070204	31	Primary Contact Recreation
Onion Creek	11070204	24	Primary Contact Recreation
Owl Creek	11070204	19	Primary Contact Recreation
Owl Creek	11070204	21	Primary Contact Recreation
Plum Creek	11070204	22	Primary Contact Recreation
Rock Creek	11070204	7	Primary Contact Recreation
Rock Creek	11070204	23	Primary Contact Recreation
Rock Creek	11070204	15	Primary Contact Recreation
School Creek	11070204	38	Primary Contact Recreation
Scott Creek	11070204	40	Primary Contact Recreation
Slack Creek	11070204	30	Primary Contact Recreation
Spring Creek	11070204	46	Primary Contact Recreation
Sutton Creek	11070204	35	Primary Contact Recreation
Turkey Branch	11070204	28	Primary Contact Recreation
Turkey Creek	11070204	18	Primary Contact Recreation
Turkey Creek	11070204	32	Primary Contact Recreation
Twiss Creek	11070204	45	Primary Contact Recreation
Varvel Creek	11070204	43	Primary Contact Recreation
Village Creek	11070204	33	Primary Contact Recreation
Wolf Creek	11070204	37	Primary Contact Recreation
Subbasin: Middle Neosho			
Bachelor Creek	11070205	40	Primary Contact Recreation
Canville Creek	11070205	16	Primary Contact Recreation
Center Creek	11070205	25	Primary Contact Recreation
Cherry Creek	11070205	4	Primary Contact Recreation
Deer Creek	11070205	27	Primary Contact Recreation
Denny Branch	11070205	31	Primary Contact Recreation
Elk Creek	11070205	19	Primary Contact Recreation
Elm Creek	11070205	43	Primary Contact Recreation
Flat Rock Creek	11070205	12	Primary Contact Recreation
Flat Rock Creek	11070205	14	Primary Contact Recreation
Fourmile Creek	11070205	49	Primary Contact Recreation
Grindstone Creek	11070205	42	Primary Contact Recreation
Hickory Creek	11070205	10	Primary Contact Recreation
Lake Creek	11070205	24	Primary Contact Recreation
Lightning Creek	11070205	6	Primary Contact Recreation
Lightning Creek	11070205	8	Primary Contact Recreation
Limestone Creek	11070205	7	Primary Contact Recreation
Little Cherry Creek	11070205	32	Primary Contact Recreation
Little Elk Creek	11070205	47	Primary Contact Recreation
Little Fly Creek	11070205	26	Secondary Contact Recreation
Little Labette Creek	11070205	23	Primary Contact Recreation
Little Walnut Creek	11070205	46	Primary Contact Recreation
Litup Creek	11070205	36	Primary Contact Recreation
Mulberry Creek	11070205	35	Primary Contact Recreation
Murphy Creek	11070205	41	Primary Contact Recreation
Ogeese Creek	11070205	38	Primary Contact Recreation
Pecan Creek	11070205	45	Primary Contact Recreation
Plum Creek	11070205	34	Primary Contact Recreation
Rock Creek	11070205	48	Primary Contact Recreation
Spring Creek	11070205	30	Primary Contact Recreation
Stink Branch	11070205	37	Primary Contact Recreation
Thunderbolt Creek	11070205	44	Primary Contact Recreation
Tolen Creek	11070205	39	Primary Contact Recreation
Town Creek	11070205	28	Primary Contact Recreation
Turkey Creek	11070205	29	Primary Contact Recreation
Walnut Creek	11070205	13	Primary Contact Recreation
Wolf Creek	11070205	33	Primary Contact Recreation
Subbasin: Lake O' the Cherokees			
Fourmile Creek	11070206	18	Primary Contact Recreation
Tar Creek	11070206	19	Primary Contact Recreation
Subbasin: Spring			
Little Shawnee Creek	11070207	22	Primary Contact Recreation
Long Branch	11070207	21	Primary Contact Recreation
Shawnee Creek	11070207	17	Primary Contact Recreation
Taylor Branch	11070207	25	Primary Contact Recreation
Willow Creek	11070207	20	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Basin: Smoky Hill/Saline			
Subbasin: Middle Smoky Hill			
Ash Creek	10260006	37	Primary Contact Recreation
Big Timber Creek	10260006	24	Primary Contact Recreation
Big Timber Creek	10260006	25	Primary Contact Recreation
Big Timber Creek	10260006	27	Primary Contact Recreation
Blood Creek	10260006	35	Secondary Contact Recreation
Buck Creek	10260006	29	Primary Contact Recreation
Buffalo Creek	10260006	6	Primary Contact Recreation
Clear Creek	10260006	42	Primary Contact Recreation
Coal Creek	10260006	34	Primary Contact Recreation
Cow Creek	10260006	38	Primary Contact Recreation
Eagle Creek	10260006	30	Primary Contact Recreation
Fossil Creek	10260006	13	Primary Contact Recreation
Goose Creek	10260006	39	Primary Contact Recreation
Landon Creek	10260006	31	Primary Contact Recreation
Loss Creek	10260006	44	Primary Contact Recreation
Mud Creek	10260006	47	Primary Contact Recreation
Oxide Creek	10260006	45	Primary Contact Recreation
Sellens Creek	10260006	32	Primary Contact Recreation
Shelter Creek	10260006	43	Primary Contact Recreation
Skunk Creek	10260006	48	Primary Contact Recreation
Spring Creek	10260006	41	Primary Contact Recreation
Timber Creek	10260006	26	Primary Contact Recreation
Turkey Creek	10260006	46	Primary Contact Recreation
Unnamed Stream	10260006	20	Primary Contact Recreation
Unnamed Stream	10260006	23	Primary Contact Recreation
Unnamed Stream	10260006	28	Primary Contact Recreation
Wilson Creek	10260006	40	Primary Contact Recreation
Wolf Creek	10260006	36	Primary Contact Recreation
Subbasin: Lower Smoky Hill			
Basket Creek	10260008	40	Primary Contact Recreation
Battle Creek	10260008	23	Primary Contact Recreation
Carry Creek	10260008	32	Primary Contact Recreation
Carry Creek	10260008	35	Primary Contact Recreation
Chapman Creek, West	10260008	5	Primary Contact Recreation
Dry Creek	10260008	36	Primary Contact Recreation
Dry Creek, East	10260008	43	Primary Contact Recreation
Hobbs Creek	10260008	48	Primary Contact Recreation
Holland Creek	10260008	25	Primary Contact Recreation
Holland Creek, East	10260008	27	Primary Contact Recreation
Holland Creek, West	10260008	26	Primary Contact Recreation
Kentucky Creek	10260008	17	Secondary Contact Recreation
Kentucky Creek, West	10260008	54	Primary Contact Recreation
Lone Tree Creek	10260008	41	Primary Contact Recreation
Lyon Creek, West Branch	10260008	34	Primary Contact Recreation
Mcallister Creek	10260008	49	Primary Contact Recreation
Middle Branch	10260008	58	Primary Contact Recreation
Mud Creek	10260008	8	Primary Contact Recreation
Otter Creek	10260008	42	Primary Contact Recreation
Paint Creek	10260008	52	Secondary Contact Recreation
Pewee Creek	10260008	56	Primary Contact Recreation
Sand Creek	10260008	46	Primary Contact Recreation
Sharps Creek	10260008	16	Secondary Contact Recreation
Spring Creek	10260008	45	Primary Contact Recreation
Stag Creek	10260008	19	Primary Contact Recreation
Turkey Creek	10260008	28	Primary Contact Recreation
Turkey Creek	10260008	30	Primary Contact Recreation
Turkey Creek, East	10260008	50	Primary Contact Recreation
Turkey Creek, West Branch	10260008	29	Primary Contact Recreation
Unnamed Stream	10260008	K3	Primary Contact Recreation
Unnamed Stream	10260008	K4	Primary Contact Recreation
Unnamed Stream	10260008	K24	Primary Contact Recreation
Wiley Creek	10260008	47	Primary Contact Recreation
Subbasin: Upper Saline			
Cedar Creek	10260009	30	Secondary Contact Recreation
Chalk Creek	10260009	26	Primary Contact Recreation
Coyote Creek	10260009	23	Primary Contact Recreation
Eagle Creek	10260009	6	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Happy Creek	10260009	25	Primary Contact Recreation
Paradise Creek	10260009	5	Primary Contact Recreation
Salt Creek	10260009	20	Primary Contact Recreation
Spring Creek, East	10260009	10	Primary Contact Recreation
Sweetwater Creek	10260009	29	Primary Contact Recreation
Trego Creek	10260009	19	Primary Contact Recreation
Unnamed Stream	10260009	13	Primary Contact Recreation
Wild Horse Creek	10260009	27	Primary Contact Recreation
Subbasin: Lower Saline			
Bacon Creek	10260010	7	Primary Contact Recreation
Blue Stem Creek	10260010	33	Primary Contact Recreation
Coon Creek	10260010	31	Primary Contact Recreation
Dry Creek	10260010	29	Secondary Contact Recreation
Eff Creek	10260010	23	Primary Contact Recreation
Elkhorn Creek	10260010	17	Primary Contact Recreation
Elkhorn Creek, West	10260010	38	Primary Contact Recreation
Fourmile Creek	10260010	30	Primary Contact Recreation
Lost Creek	10260010	34	Secondary Contact Recreation
Owl Creek	10260010	18	Primary Contact Recreation
Owl Creek	10260010	39	Primary Contact Recreation
Ralston Creek	10260010	28	Primary Contact Recreation
Shaw Creek	10260010	41	Primary Contact Recreation
Spillman Creek	10260010	6	Primary Contact Recreation
Spillman Creek, North Branch	10260010	8	Primary Contact Recreation
Spring Creek	10260010	16	Primary Contact Recreation
Spring Creek	10260010	19	Primary Contact Recreation
Spring Creek	10260010	20	Primary Contact Recreation
Spring Creek	10260010	24	Primary Contact Recreation
Spring Creek	10260010	26	Primary Contact Recreation
Spring Creek	10260010	27	Primary Contact Recreation
Table Rock Creek	10260010	40	Primary Contact Recreation
Trail Creek	10260010	32	Secondary Contact Recreation
Twelvemile Creek	10260010	36	Primary Contact Recreation
Twin Creek, West	10260010	37	Secondary Contact Recreation
West Spring Creek	10260010	25	Primary Contact Recreation
Wolf Creek	10260010	10	Primary Contact Recreation
Wolf Creek, East Fork	10260010	11	Primary Contact Recreation
Wolf Creek, West Fork	10260010	12	Primary Contact Recreation
Yauger Creek	10260010	35	Primary Contact Recreation
Basin: Solomon			
Subbasin: Upper North Fork Solomon			
Ash Creek	10260011	24	Primary Contact Recreation
Beaver Creek	10260011	23	Primary Contact Recreation
Big Timber Creek	10260011	8	Primary Contact Recreation
Bow Creek	10260011	15	Primary Contact Recreation
Cactus Creek	10260011	28	Primary Contact Recreation
Crooked Creek	10260011	6	Primary Contact Recreation
Elk Creek	10260011	12	Primary Contact Recreation
Elk Creek, East	10260011	25	Primary Contact Recreation
Game Creek	10260011	10	Primary Contact Recreation
Game Creek	10260011	27	Primary Contact Recreation
Lost Creek	10260011	20	Primary Contact Recreation
Sand Creek	10260011	26	Primary Contact Recreation
Scull Creek	10260011	21	Primary Contact Recreation
Spring Creek	10260011	19	Primary Contact Recreation
Wolf Creek	10260011	22	Primary Contact Recreation
Subbasin: Lower North Fork Solomon			
Beaver Creek	10260012	10	Primary Contact Recreation
Beaver Creek, East Branch	10260012	11	Primary Contact Recreation
Beaver Creek, Middle	10260012	12	Primary Contact Recreation
Beaver Creek, Middle	10260012	13	Primary Contact Recreation
Beaver Creek, West	10260012	14	Secondary Contact Recreation
Big Creek	10260012	26	Primary Contact Recreation
Boughton Creek	10260012	34	Primary Contact Recreation
Buck Creek	10260012	43	Secondary Contact Recreation
Cedar Creek	10260012	16	Primary Contact Recreation
Cedar Creek	10260012	18	Primary Contact Recreation
Cedar Creek, East	10260012	17	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Cedar Creek, East Middle	10260012	37	Primary Contact Recreation
Cedar Creek, Middle	10260012	19	Secondary Contact Recreation
Deer Creek	10260012	23	Primary Contact Recreation
Deer Creek	10260012	25	Primary Contact Recreation
Deer Creek	10260012	27	Primary Contact Recreation
Deer Creek	10260012	29	Primary Contact Recreation
Deer Creek	10260012	31	Primary Contact Recreation
Dry Creek	10260012	42	Primary Contact Recreation
Glen Rock Creek	10260012	41	Primary Contact Recreation
Lawrence Creek	10260012	44	Primary Contact Recreation
Lindley Creek	10260012	45	Primary Contact Recreation
Little Oak Creek	10260012	3	Primary Contact Recreation
Medicine Creek	10260012	33	Primary Contact Recreation
Oak Creek	10260012	2	Primary Contact Recreation
Oak Creek	10260012	4	Primary Contact Recreation
Oak Creek, East	10260012	40	Primary Contact Recreation
Oak Creek, West	10260012	39	Secondary Contact Recreation
Plotner Creek	10260012	30	Primary Contact Recreation
Plum Creek	10260012	20	Primary Contact Recreation
Spring Creek	10260012	8	Secondary Contact Recreation
Spring Creek	10260012	28	Secondary Contact Recreation
Starvation Creek	10260012	38	Primary Contact Recreation
Turner Creek	10260012	24	Primary Contact Recreation
Subbasin: Upper South Fork Solomon			
Spring Creek	10260013	5	Primary Contact Recreation
Subbasin: Lower South Fork Solomon			
Ash Creek	10260014	22	Primary Contact Recreation
Boxelder Creek	10260014	14	Primary Contact Recreation
Carr Creek	10260014	21	Primary Contact Recreation
Covert Creek	10260014	19	Primary Contact Recreation
Crooked Creek	10260014	27	Primary Contact Recreation
Dibble Creek	10260014	23	Primary Contact Recreation
Elm Creek	10260014	15	Primary Contact Recreation
Jim Creek	10260014	25	Primary Contact Recreation
Kill Creek	10260014	18	Primary Contact Recreation
Kill Creek, East	10260014	28	Primary Contact Recreation
Lost Creek	10260014	13	Primary Contact Recreation
Lucky Creek	10260014	26	Primary Contact Recreation
Medicine Creek	10260014	16	Primary Contact Recreation
Medicine Creek	10260014	17	Primary Contact Recreation
Robbers Roost Creek	10260014	24	Primary Contact Recreation
Twin Creek	10260014	20	Primary Contact Recreation
Twin Creek, East	10260014	29	Primary Contact Recreation
Subbasin: Solomon River			
Cow Creek	10260015	28	Primary Contact Recreation
Fifth Creek	10260015	45	Secondary Contact Recreation
Granite Creek	10260015	24	Secondary Contact Recreation
Leban Creek	10260015	41	Secondary Contact Recreation
Mill Creek	10260015	38	Secondary Contact Recreation
Mulberry Creek	10260015	36	Secondary Contact Recreation
Pipe Creek	10260015	9	Primary Contact Recreation
Walnut Creek	10260015	26	Secondary Contact Recreation
Basin: Upper Arkansas			
Subbasin: Buckner			
Buckner Creek, South Fork	11030006	6	Primary Contact Recreation
Duck Creek	11030006	8	Secondary Contact Recreation
Elm Creek	11030006	5	Primary Contact Recreation
Saw Log Creek	11030006	3	Primary Contact Recreation
Saw Log Creek	11030006	4	Secondary Contact Recreation
Subbasin: Lower Walnut Creek			
Alexander Dry Creek	11030008	7	Secondary Contact Recreation
Bazine Creek	11030008	9	Secondary Contact Recreation
Boot Creek	11030008	15	Secondary Contact Recreation
Dry Creek	11030008	14	Secondary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Dry Walnut Creek	11030008	13	Secondary Contact Recreation
Otter Creek	11030008	12	Primary Contact Recreation
Sand Creek	11030008	3	Secondary Contact Recreation
Sandy Creek	11030008	11	Secondary Contact Recreation
Walnut Creek	11030008	1	Primary Contact Recreation
Walnut Creek	11030008	2	Primary Contact Recreation
Walnut Creek	11030008	4	Primary Contact Recreation
Basin: Upper Republican			
Subbasin: South Fork Republican			
Big Timber Creek	10250003	61	Secondary Contact Recreation
Subbasin: Beaver			
Beaver Creek	10250014	2	Secondary Contact Recreation
Basin: Verdigris			
Subbasin: Upper Verdigris			
Bachelor Creek	11070101	21	Primary Contact Recreation
Bernard Creek	11070101	24	Secondary Contact Recreation
Big Cedar Creek	11070101	39	Primary Contact Recreation
Brazil Creek	11070101	31	Primary Contact Recreation
Buffalo Creek	11070101	2	Primary Contact Recreation
Buffalo Creek, West	11070101	34	Primary Contact Recreation
Cedar Creek	11070101	32	Primary Contact Recreation
Chetopa Creek	11070101	22	Primary Contact Recreation
Crooked Creek	11070101	38	Primary Contact Recreation
Dry Creek	11070101	27	Primary Contact Recreation
Elder Branch	11070101	37	Primary Contact Recreation
Fancy Creek	11070101	28	Primary Contact Recreation
Greenhall Creek	11070101	26	Primary Contact Recreation
Holderman Creek	11070101	47	Primary Contact Recreation
Homer Creek	11070101	20	Primary Contact Recreation
Kelly Branch	11070101	42	Primary Contact Recreation
Kuntz Branch	11070101	29	Primary Contact Recreation
Little Sandy Creek	11070101	33	Primary Contact Recreation
Long Creek	11070101	45	Primary Contact Recreation
Miller Creek	11070101	30	Primary Contact Recreation
Moon Branch	11070101	43	Primary Contact Recreation
Onion Creek	11070101	23	Primary Contact Recreation
Rock Creek	11070101	14	Primary Contact Recreation
Ross Branch	11070101	35	Primary Contact Recreation
Sandy Creek	11070101	4	Primary Contact Recreation
Shaw Creek	11070101	40	Primary Contact Recreation
Slate Creek	11070101	25	Primary Contact Recreation
Snake Creek	11070101	36	Primary Contact Recreation
Tate Branch Creek	11070101	44	Primary Contact Recreation
Van Horn Creek	11070101	46	Primary Contact Recreation
Verdigris River, Bernard Branch	11070101	16	Primary Contact Recreation
Verdigris River, North Branch	11070101	13	Primary Contact Recreation
Verdigris River, North Branch	11070101	15	Primary Contact Recreation
Walnut Creek	11070101	19	Primary Contact Recreation
West Creek	11070101	17	Primary Contact Recreation
Wolf Creek	11070101	41	Primary Contact Recreation
Subbasin: Fall			
Battle Creek	11070102	18	Primary Contact Recreation
Burnt Creek	11070102	24	Primary Contact Recreation
Clear Creek	11070102	37	Primary Contact Recreation
Coon Creek	11070102	25	Primary Contact Recreation
Coon Creek	11070102	36	Primary Contact Recreation
Crain Creek	11070102	32	Primary Contact Recreation
Honey Creek	11070102	26	Primary Contact Recreation
Indian Creek	11070102	15	Primary Contact Recreation
Ivanpah Creek	11070102	19	Primary Contact Recreation
Kitty Creek	11070102	27	Primary Contact Recreation
Little Indian Creek	11070102	34	Primary Contact Recreation
Little Salt Creek	11070102	35	Primary Contact Recreation
Oleson Creek	11070102	21	Primary Contact Recreation
Otis Creek	11070102	20	Primary Contact Recreation
Plum Creek	11070102	30	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Rainbow Creek, East	11070102	17	Primary Contact Recreation
Salt Creek	11070102	14	Primary Contact Recreation
Salt Creek	11070102	38	Primary Contact Recreation
Silver Creek	11070102	33	Primary Contact Recreation
Snake Creek	11070102	31	Primary Contact Recreation
Spring Creek	11070102	12	Primary Contact Recreation
Swing Creek	11070102	989	Primary Contact Recreation
Tadpole Creek	11070102	29	Primary Contact Recreation
Watson Branch	11070102	23	Primary Contact Recreation
Subbasin: Middle Verdigris			
Big Creek	11070103	21	Primary Contact Recreation
Biscuit Creek	11070103	53	Primary Contact Recreation
Bluff Run	11070103	54	Primary Contact Recreation
Choteau Creek	11070103	63	Primary Contact Recreation
Claymore Creek	11070103	50	Primary Contact Recreation
Deadman Creek	11070103	57	Primary Contact Recreation
Deer Creek	11070103	51	Primary Contact Recreation
Drum Creek	11070103	34	Primary Contact Recreation
Dry Creek	11070103	37	Primary Contact Recreation
Fawn Creek	11070103	56	Primary Contact Recreation
Mud Creek	11070103	59	Primary Contact Recreation
Onion Creek	11070103	39	Primary Contact Recreation
Potato Creek	11070103	31	Primary Contact Recreation
Prior Creek	11070103	62	Primary Contact Recreation
Pumpkin Creek	11070103	28	Primary Contact Recreation
Richland Creek	11070103	49	Primary Contact Recreation
Rock Creek	11070103	58	Primary Contact Recreation
Rock Creek	11070103	61	Primary Contact Recreation
Snow Creek	11070103	25	Primary Contact Recreation
Spring Creek	11070103	55	Primary Contact Recreation
Sycamore Creek	11070103	52	Primary Contact Recreation
Wildcat Creek	11070103	60	Primary Contact Recreation
Subbasin: Elk			
Bachelor Creek	11070104	25	Primary Contact Recreation
Bloody Run	11070104	26	Primary Contact Recreation
Bull Creek	11070104	33	Primary Contact Recreation
Card Creek	11070104	19	Primary Contact Recreation
Chetopa Creek	11070104	18	Primary Contact Recreation
Clear Creek	11070104	30	Primary Contact Recreation
Clear Creek	11070104	32	Primary Contact Recreation
Coffey Branch	11070104	20	Primary Contact Recreation
Duck Creek	11070104	3	Primary Contact Recreation
Elk River, Mound Branch	11070104	15	Primary Contact Recreation
Elk River, South Branch	11070104	38	Primary Contact Recreation
Elk River, Rowe Branch	11070104	39	Primary Contact Recreation
Elm Branch	11070104	23	Primary Contact Recreation
Hickory Creek	11070104	28	Primary Contact Recreation
Hitchen Creek	11070104	7	Primary Contact Recreation
Hitchen Creek, East	11070104	35	Primary Contact Recreation
Little Duck Creek	11070104	24	Primary Contact Recreation
Little Hitchen Creek	11070104	37	Primary Contact Recreation
Painterhood Creek	11070104	5	Primary Contact Recreation
Painterhood Creek, East	11070104	36	Primary Contact Recreation
Pan Creek	11070104	27	Primary Contact Recreation
Pawpaw Creek	11070104	11	Primary Contact Recreation
Racket Creek	11070104	21	Primary Contact Recreation
Rock Creek	11070104	13	Primary Contact Recreation
Salt Creek	11070104	17	Primary Contact Recreation
Salt Creek, South	11070104	29	Primary Contact Recreation
Skull Creek	11070104	31	Primary Contact Recreation
Snake Creek	11070104	34	Primary Contact Recreation
Sycamore Creek	11070104	22	Primary Contact Recreation
Wildcat Creek	11070104	16	Primary Contact Recreation
Subbasin: Caney			
Bachelor Creek	11070106	47	Primary Contact Recreation
Bee Creek	11070106	9	Primary Contact Recreation
California Creek	11070106	48	Primary Contact Recreation
Caney Creek	11070106	12	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Caney River, East Fork	11070106	52	Primary Contact Recreation
Caney Creek, North	11070106	11	Primary Contact Recreation
Cedar Creek	11070106	30	Primary Contact Recreation
Cedar Creek	11070106	32	Primary Contact Recreation
Cheyenne Creek	11070106	40	Primary Contact Recreation
Coon Creek	11070106	36	Primary Contact Recreation
Corum Creek	11070106	51	Primary Contact Recreation
Cotton Creek	11070106	38	Primary Contact Recreation
Cotton Creek, North Fork	11070106	37	Primary Contact Recreation
Dry Creek	11070106	29	Primary Contact Recreation
Fly Creek	11070106	46	Primary Contact Recreation
Illinois Creek	11070106	39	Primary Contact Recreation
Jim Creek	11070106	49	Primary Contact Recreation
Lake Creek	11070106	34	Primary Contact Recreation
Otter Creek	11070106	33	Primary Contact Recreation
Pool Creek	11070106	43	Primary Contact Recreation
Possum Trot Creek	11070106	74	Primary Contact Recreation
Rock Creek	11070106	28	Primary Contact Recreation
Spring Creek	11070106	44	Primary Contact Recreation
Spring Creek	11070106	53	Primary Contact Recreation
Squaw Creek	11070106	42	Primary Contact Recreation
Sycamore Creek	11070106	31	Primary Contact Recreation
Turkey Creek	11070106	45	Primary Contact Recreation
Union Creek	11070106	41	Primary Contact Recreation
Wolf Creek	11070106	35	Primary Contact Recreation
Wolf Creek	11070106	50	Primary Contact Recreation
Basin: Walnut			
Subbasin: Upper Walnut River			
Badger Creek	11030017	36	Primary Contact Recreation
Bemis Creek	11030017	8	Primary Contact Recreation
Cole Creek	11030017	15	Primary Contact Recreation
Constant Creek	11030017	41	Primary Contact Recreation
Dry Creek	11030017	27	Primary Contact Recreation
Dry Creek	11030017	32	Primary Contact Recreation
Durechen Creek	11030017	12	Primary Contact Recreation
Elm Creek	11030017	43	Primary Contact Recreation
Fourmile Creek	11030017	20	Primary Contact Recreation
Gilmore Branch	11030017	39	Primary Contact Recreation
Gypsum Creek	11030017	30	Primary Contact Recreation
Henry Creek	11030017	33	Primary Contact Recreation
Lower Branch	11030017	42	Primary Contact Recreation
Prairie Creek	11030017	35	Primary Contact Recreation
Rock Creek	11030017	37	Primary Contact Recreation
Sand Creek	11030017	29	Primary Contact Recreation
Satchel Creek	11030017	10	Primary Contact Recreation
School Branch	11030017	45	Primary Contact Recreation
Sutton Creek	11030017	40	Primary Contact Recreation
Walnut Creek	11030017	44	Primary Contact Recreation
Whitewater Creek	11030017	34	Primary Contact Recreation
Whitewater Creek, East Branch	11030017	31	Primary Contact Recreation
Whitewater River, East Branch	11030017	22	Primary Contact Recreation
Whitewater River, West Branch	11030017	24	Primary Contact Recreation
Whitewater River, West Branch	11030017	25	Primary Contact Recreation
Wildcat Creek	11030017	26	Primary Contact Recreation
Wildcat Creek, West	11030017	28	Primary Contact Recreation
Subbasin: Lower Walnut River			
Black Crook Creek	11030018	18	Primary Contact Recreation
Cedar Creek	11030018	19	Secondary Contact Recreation
Chigger Creek	11030018	21	Primary Contact Recreation
Crooked Creek	11030018	31	Primary Contact Recreation
Durham Creek	11030018	23	Primary Contact Recreation
Dutch Creek	11030018	2	Primary Contact Recreation
Dutch Creek	11030018	4	Primary Contact Recreation
Eightmile Creek	11030018	30	Primary Contact Recreation
Foos Creek	11030018	26	Primary Contact Recreation
Hickory Creek	11030018	12	Primary Contact Recreation
Honey Creek	11030018	33	Primary Contact Recreation
Little Dutch Creek	11030018	27	Primary Contact Recreation
Lower Dutch Creek	11030018	20	Primary Contact Recreation
Plum Creek	11030018	36	Primary Contact Recreation

Stream segment name	HUC8	Segment #	Designated use
Polecat Creek	11030018	17	Primary Contact Recreation
Posey Creek	11030018	37	Primary Contact Recreation
Richland Creek	11030018	25	Primary Contact Recreation
Rock Creek, North Branch	11030018	35	Primary Contact Recreation
Sanford Creek	11030018	29	Primary Contact Recreation
Spring Branch	11030018	32	Primary Contact Recreation
Stalter Branch	11030018	24	Primary Contact Recreation
Stewart Creek	11030018	28	Primary Contact Recreation
Swisher Branch	11030018	22	Primary Contact Recreation
Total = 1186			

Lake name	County	Designated use
Basin: Cimarron		
Subbasin: Upper Cimarron (HUC 11040002)		
Moss Lake East	MORTON	Primary Contact Recreation
Moss Lake West	MORTON	Primary Contact Recreation
Subbasin: North Fork Cimarron (HUC 11040006)		
Russell Lake	STEVENS	Primary Contact Recreation
Subbasin: Upper Cimarron-Bluff (HUC 11040008)		
Clark State Fishing Lake	CLARK	Primary Contact Recreation
Saint Jacob's Well	CLARK	Primary Contact Recreation
Basin: Kansas/Lower Republican		
Subbasin: Middle Republican (HUC 10250016)		
Lake Jewell	JEWELL	Primary Contact Recreation
Subbasin: Lower Republican (HUC 10250017)		
Belleville City Lake	REPUBLIC	Primary Contact Recreation
Wakefield Lake	CLAY	Primary Contact Recreation
Subbasin: Middle Kansas (HUC 10270102)		
Alma City Reservoir	WABAUNSEE	Primary Contact Recreation
Cedar Crest Pond	SHAWNEE	Primary Contact Recreation
Central Park Lake	SHAWNEE	Primary Contact Recreation
Gage Park Lake	SHAWNEE	Primary Contact Recreation
Jeffrey Energy Center Lakes	POTTAWATOMIE	Primary Contact Recreation
Subbasin: Delaware (HUC 10270103)		
Atchison County Park Lake	ATCHISON	Primary Contact Recreation
Little Lake	BROWN	Primary Contact Recreation
Subbasin: Lower Kansas (HUC 10270104)		
Douglas County State Lake	DOUGLAS	Primary Contact Recreation
Lenexa Lake	JOHNSON	Primary Contact Recreation
Mahaffie Farmstead Pond	JOHNSON	Primary Contact Recreation
Pierson Park Lake	WYANDOTTE	Primary Contact Recreation
Waterworks Lakes	JOHNSON	Primary Contact Recreation
Subbasin: Lower Big Blue (HUC 10270205)		
Lake Idlewild	MARSHALL	Primary Contact Recreation
Subbasin: Lower Little Blue (HUC 10270207)		
Washington County State Fishing Lake	WASHINGTON	Primary Contact Recreation
Basin: Lower Arkansas		
Subbasin: Rattlesnake (HUC 11030009)		
Kiowa County State Fishing Lake	KIOWA	Primary Contact Recreation

Lake name	County	Designated use
Subbasin: Cow (HUC 11030011)		
Barton Lake	BARTON	Primary Contact Recreation
Sterling City Lake	RICE	Primary Contact Recreation
Subbasin: Little Arkansas (HUC 11030012)		
Dillon Park Lakes #1	RENO	Primary Contact Recreation
Dillon Park Lake #2	RENO	Primary Contact Recreation
Newton City Park Lake	HARVEY	Primary Contact Recreation
Subbasin: Middle Arkansas-Slate (HUC 11030013)		
Belaire Lake	SEDGWICK	Primary Contact Recreation
Buffalo Park Lake	SEDGWICK	Primary Contact Recreation
Emery Park	SEDGWICK	Primary Contact Recreation
Harrison Park Lake	SEDGWICK	Primary Contact Recreation
Riggs Park Lake	SEDGWICK	Primary Contact Recreation
Subbasin: South Fork Ninnescah (HUC 11030015)		
Lemon Park Lake	PRATT	Primary Contact Recreation
Subbasin: Medicine Lodge (HUC 11060003)		
Barber County State Fishing Lake	BARBER	Primary Contact Recreation
Subbasin: Lower Salt Fork Arkansas (HUC 11060004)		
Hargis Lake	BARBER	Primary Contact Recreation
Basin: Marais Des Cygnes		
Subbasin: Upper Marais Des Cygnes (HUC 10290101)		
Allen City Lake	LYON	Primary Contact Recreation
Cedar Creek Lake	ANDERSON	Primary Contact Recreation
Crystal Lake	ANDERSON	Primary Contact Recreation
Lyon County State Fishing Lake	LYON	Primary Contact Recreation
Osage City Reservoir	OSAGE	Primary Contact Recreation
Waterworks Impoundment	ANDERSON	Primary Contact Recreation
Subbasin: Lower Marais Des Cygnes (HUC 10290102)		
Edgerton City Lake	JOHNSON	Primary Contact Recreation
Edgerton South Lake	JOHNSON	Primary Contact Recreation
Lake LaCygne	LINN	Primary Contact Recreation
Louisburg State Fishing Lake	MIAMI	Primary Contact Recreation
Miami County State Fishing Lake	MIAMI	Primary Contact Recreation
Paola City Lake	MIAMI	Primary Contact Recreation
Pleasanton Lake #1	LINN	Primary Contact Recreation
Pleasanton Lake #2	LINN	Primary Contact Recreation
Spring Hill City Lake	JOHNSON	Primary Contact Recreation
Subbasin: Marmaton (HUC 10290104)		
Gunn Park Lake, East	BOURBON	Primary Contact Recreation
Gunn Park Lake, West	BOURBON	Primary Contact Recreation
Rock Creek Lake	BOURBON	Primary Contact Recreation
Basin: Missouri		
Subbasin: South Fork Big Nemaha (HUC 10240007)		
Pony Creek Lake	NEMAHA	Primary Contact Recreation
Sabetha City Lake	NEMAHA	Primary Contact Recreation
Subbasin: Independence-Sugar (HUC 10240011)		
Atchison City Lakes	ATCHISON	Primary Contact Recreation
Big Eleven Lake	WYANDOTTE	Primary Contact Recreation
Doniphan Fair Association Lake	DONIPHAN	Primary Contact Recreation
Jerrys Lake	LEAVENWORTH	Primary Contact Recreation
Lansing City Lake	LEAVENWORTH	Primary Contact Recreation
South Park Lake	LEAVENWORTH	Primary Contact Recreation

Lake name	County	Designated use
Subbasin: Lower Missouri-Crooked (HUC 10300101)		
Prairie View Park	JOHNSON	Primary Contact Recreation
South Park Lake	JOHNSON	Primary Contact Recreation
Stanley Rural Water District Lake #2	JOHNSON	Primary Contact Recreation
Stohl Park Lake	JOHNSON	Primary Contact Recreation
Basin: Neosho		
Subbasin: Lower Cottonwood (HUC 11070203)		
Peter Pan Pond	LYON	Primary Contact Recreation
Subbasin: Upper Neosho (HUC 11070204)		
Chanute City (Santa Fe) Lake	NEOSHO	Primary Contact Recreation
Leonard's Lake	WOODSON	Primary Contact Recreation
Subbasin: Middle Neosho (HUC 11070205)		
Altamont City Lake #1	LABETTE	Primary Contact Recreation
Bartlett City Lake	LABETTE	Primary Contact Recreation
Harmon Wildlife Area Lakes	LABETTE	Primary Contact Recreation
Mined Land Wildlife Area Lakes	CHEROKEE	Primary Contact Recreation
Timber Lake	NEOSHO	Primary Contact Recreation
Subbasin: Spring (HUC 11070207)		
Empire Lake	CHEROKEE	Primary Contact Recreation
Frontenac City Park	CRAWFORD	Primary Contact Recreation
Mined Land Wildlife Area Lakes	CRAWFORD	Primary Contact Recreation
Pittsburg College Lake	CRAWFORD	Primary Contact Recreation
Playters Lake	CRAWFORD	Primary Contact Recreation
Basin: Smoky Hill/Saline		
Subbasin: Lower Smoky Hill (HUC 10260008)		
Herington City Park Lake	DICKINSON	Primary Contact Recreation
Herington Reservoir	DICKINSON	Primary Contact Recreation
Basin: Solomon		
Subbasin: Lower North Fork Solomon (HUC 10260012)		
Francis Wachs Wildlife Area Lakes	SMITH	Primary Contact Recreation
Subbasin: Solomon River (HUC 10260015)		
Jewell County State Fishing Lake	JEWELL	Primary Contact Recreation
Ottawa County State Fishing Lake	OTTAWA	Primary Contact Recreation
Basin: Upper Arkansas		
Subbasin: Middle Arkansas-Lake McKinney (HUC 11030001)		
Lake McKinney	KEARNY	Primary Contact Recreation
Subbasin: Arkansas-Dodge City (HUC 11030003)		
Lake Charles	FORD	Primary Contact Recreation
Subbasin: Pawnee (HUC 11030005)		
Concannon State Fishing Lake	FINNEY	Primary Contact Recreation
Finney County Game Refuge Lakes	FINNEY	Primary Contact Recreation
Subbasin: Buckner (HUC 11030006)		
Ford County Lake	FORD	Primary Contact Recreation
Hain State Fishing Lake	FORD	Primary Contact Recreation
Subbasin: Upper Walnut Creek (HUC 11030007)		
Goodman State Fishing Lake	NESS	Primary Contact Recreation
Subbasin: Lower Walnut Creek (HUC 11030008)		
Memorial Park Lake	BARTON	Primary Contact Recreation

Lake name	County	Designated use
Stone Lake	BARTON	Primary Contact Recreation
Basin: Verdigris		
Subbasin: Upper Verdigris (HUC 11070101)		
Quarry Lake	WILSON	Primary Contact Recreation
Thayer New City Lake	NEOSHO	Primary Contact Recreation
Subbasin: Middle Verdigris (HUC 11070103)		
La Claire Lake	MONTGOMERY	Primary Contact Recreation
Pfister Park Lakes	MONTGOMERY	Primary Contact Recreation
Subbasin: Caney (HUC 11070106)		
Caney City Lake	CHAUTAUQUA	Primary Contact Recreation
Basin: Walnut		
Subbasin: Lower Walnut River (HUC 11030018)		
Butler County State Fishing Lake	BUTLER	Primary Contact Recreation
Winfield Park Lagoon	COWLEY	Primary Contact Recreation
Total = 100		

(c) Water quality standard variances. (1) The Regional Administrator, EPA Region 7, is authorized to grant variances from the water quality standards in paragraphs (a) and (b) of this section where the requirements of this paragraph (c) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (c)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) Procedures. An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 7. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (c)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Kansas' NPDES program

(5) A variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

[FR Doc. 03–16924 Filed 7–3–03; 8:45 am]

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Federal Register

Monday,
July 7, 2003

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 15 and 31

Federal Acquisition Regulation; Gains and Losses, Maintenance and Repair Costs, and Material Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15 and 31

[FAR Case 2002–008]

RIN 9000–AJ69

Federal Acquisition Regulation; Gains and Losses, Maintenance and Repair Costs, and Material Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by deleting the cost principle regarding maintenance and repair costs, revising the cost principles regarding gains and losses on disposition or impairment of depreciable property or other capital assets, and by revising the language concerning material costs.

DATES: Interested parties should submit comments in writing on or before September 5, 2003 to be considered in the formulation of a final rule.

ADDRESSES: 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.2002–008@gsa.gov.*

Please submit comments only and cite FAR case 2002–008 in all correspondence related to this case.

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 Edward Loeb, Procurement Analyst, at (202) 501–0650. Please cite FAR case 2002–008.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD Director of Defense Procurement established a special interagency Ad Hoc Committee to perform a comprehensive review of policies and procedures in FAR Part 31, Contract Cost Principles and Procedures, relating to cost measurement, assignment, and allocation. The Director announced a series of public meetings in the **Federal Register** notice at 66 FR 13712, March 7, 2001, (with a ''correction to notice'' published in the **Federal Register** at 66 FR 16186, March 23, 2001). Attendees at the public meetings (held on April 19, 2001, May 10–11, 2001, and June 12, 2001) included representatives from industry, Government, and other interested parties who provided views on potential areas for revision in FAR Part 31. The Ad Hoc Committee reviewed the cost principles and procedures and the public comments; identified potential changes to the FAR; and submitted several reports, including draft proposed rules for consideration by the Councils.

The Councils reviewed the reports related to FAR 31.205–16, Gains and losses on disposition or impairment of depreciable property or other capital assets, FAR 31.205–24, Maintenance and repair costs, and FAR 31.205–26, Material costs, and proposed the following revisions:

1. *FAR 31.205–16.* Add a new paragraph (b) that addresses the method and timing for determining the gain and loss associated with a sale and leaseback arrangement. The Councils believe that (a) a contractor should not benefit or be penalized for entering into a sale and leaseback arrangement; (b) the Government should reimburse the contractor the same amount for the subject asset as if the contractor had retained title; and (c) the Government would be precluded from recovering the financing costs that were imbedded in the sales price should the gain be recognized at the date of the sale and leaseback arrangement. For these reasons, the Councils are recommending that the gain or loss be determined at the end of the lease term or when the contractor no longer occupies the property (whichever date is later), rather than the date of the sale and leaseback arrangement. Implementation of adequate agency guidance and tracking controls (*e.g.,* maintenance of permanent files on contractors by auditors) should assure that the Government properly computes its share of the gain or loss at the date of disposition.

The Councils do not believe the impairment language currently in paragraph (f) of the cost principle should be revised because 48 CFR 9904.404—Capitalization of Tangible Assets, and 48 CFR 9904.409—Cost Accounting Standard—Depreciation of Tangible Capital Assets, do not address the issue of asset impairments.

2. *FAR 31.205–24.* Delete this cost principle which addresses the assignment of maintenance and repair costs to cost accounting periods. The Councils believe that 48 CFR 9904—Cost Accounting Standards adequately addresses these costs for contracts subject to full CAS coverage. For business units with no contracts subject to full CAS coverage, Generally Accepted Accounting Principles (GAAP) would apply to all of the contracts in the business unit subject to FAR Part 31. GAAP, which include criteria for determining whether a cost should be expensed or capitalized, adequately address this issue. For business units that have contracts subject to full CAS coverage and contracts that are not, the contractor would be required to apply a method that was consistent with GAAP for the contracts that are not subject to full CAS coverage (this method could be the same as the method used by the business unit for contracts subject to full CAS coverage).

3. *FAR 31.205–26.* Delete the current paragraph (c) and the last sentence of the current paragraph (d). Paragraph (c) requires that adjustments for differences in physical and book inventories relate to the period of contract performance. The Councils recommend deleting this provision, and, thereby, relying upon GAAP.

The Councils also recommend deleting the last sentence of the current paragraph (d). This sentence provides specific methods for estimating material costs. Since FAR 31 focuses on criteria regarding the allowability of costs rather than the methods used to estimate costs, this sentence has been deleted.

4. Make related editorial changes.

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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles discussed in this rule. 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 15 and 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2002–008), 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 15 and 31

Government procurement.

Dated: June 26, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 15 and 32 as set forth below:

1. The authority citation for 48 CFR parts 15 and 31 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 15—CONTRACTING BY NEGOTIATION

15.208 [Amended]

2. In section 15.408, amend Table 15–2, which follows paragraph (m)(4), by removing from paragraph A.(1) of Item II, Cost Elements, ''31.205–26(e)'' and adding ''31.205–26(c)'' in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

3. In section 31.205–7, revise the last sentence in paragraph (c)(2) to read as follows:

31.205–7 Contingencies.

* * * * *

(c) * * *

(2) * * * (See, for example, 31.205–6(g) and 31.205–19).

* * * * *

31.205–11 [Amended]

4. Amend section 31.205–11 in paragraph (k) by removing ''31.205–26(e)'' and adding ''31.205–26(c)'' in its place.

5. Amend section 31.205–16 as follows:

a. Revise paragraph (a);

b. Redesignate paragraphs (b) through (g) as (c) through (h), respectively;

c. Add a new paragraph (b);

d. Revise the newly designated paragraphs (c), (d)(1), (e), and (f);

e. Amend the newly designated paragraph (d)(2)(ii) by removing ''subparagraph (c)(1)'' and adding ''paragraph (d)(1)'' in its place;

f. Amend the newly designated paragraph (g) by removing ''shall be'' and adding ''is'' in its place; and

g. Amend the first sentence of the newly designated paragraph (h) by removing ''shall be'' and adding ''is'' in its place. The added and revised text reads as follows:

31.205–16 Gains and losses on disposition or impairment of depreciable property or other capital assets.

(a) The Government and the contractor shall include gains and losses from the sale, retirement, or other disposition (but see 31–205.19) of depreciable property in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (e) of this subsection). However, no gain or loss is recognized as a result of the transfer of assets in a business combination (*see* 31.205–52).

(b) Notwithstanding the provisions in paragraph (c) of this subsection, when costs of depreciable property are subject to the sale and leaseback limitations in 31.205–11(m)(1) or 31.205–36(b)(2)—

(1) The gain or loss is the difference between the fair market value on the disposition date and the adjusted asset value at the time of disposition (as defined in paragraph (b)(3) of this subsection);

(2) The disposition date is the later of—

(i) The latest ending date of the lease term, including any extensions and renewals; or

(ii) The date the contractor vacates the property; and

(3) The adjusted asset value at the time of disposition is the contractor's original asset cost less the sum of—

(i) The allowable depreciation costs for the period prior to the date of the sale and leaseback; and

(ii) The depreciation costs that would have been allowed had the contractor retained title to the property from the date of the sale and leaseback until the disposition date.

(c) The Government and the contractor consider gains and losses on disposition of tangible capital assets including those acquired under capital leases (see 31.205–11(m)) as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The Government and the contractor shall limit the gain recognized for contract costing purposes to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is capitalized) of the asset and its undepreciated balance (except see paragraph (d)(2)(i) or (ii) of this subsection).

(d) * * *

(1) When there is a cash award and the converted asset is not replaced, the Government and the contractor shall recognize the gain or loss in the period of disposition. The gain recognized for contract costing purposes is limited to the difference between the acquisition cost of the asset and its undepreciated balance.

* * * * *

(e) The Government and the contractor shall not recognize gains or losses on the disposition of depreciable property as a separate charge or credit when the contractor—

(1) Processes the gains and losses through the depreciation reserve account and reflects them in the depreciation allowable under 31.205–11; or

(2) Exchanges the property as part of the purchase price of a similar item, and takes into consideration the gain or loss in the depreciation cost basis of the new item.

(f) The Government and the contractor shall consider gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations on a case-by-case basis.

* * * * *

31.205–24 [Removed & Reserved]

6. Remove and reserve section 31.205–24.

7. Revise section 31.205–26 to read as follows:

31.205–26 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs, the contractor shall consider reasonable overruns, spoilage, or defective work (unless otherwise provided in any contract provision relating to inspecting and correcting defective work).

(b) The contractor shall—

(1) Adjust the costs of material for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts,

and credits for scrap, salvage, and material returned to vendors; and

(2) Credit such income and other credits either directly to the cost of the material or allocate such income and other credits as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, the contractor does not need to credit lost discounts.

(c) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable.

(d) Allowance for all materials, supplies and services that are sold or transferred between any divisions, subdivisions, subsidiaries or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when—

(1) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(2) The item being transferred qualifies for an exception under 15.403–1(b) and the contracting officer has not determined the price to be unreasonable.

(e) When a commercial item under paragraph (c) of this subsection is transferred at a price based on a catalog or market price, the contractor—

(1) Should adjust the price to reflect the quantities being acquired; and

(2) May adjust the price to reflect the actual cost of any modifications necessary because of contract requirements.

31.205–44 [Amended]

8. Amend section 31.205–44 in paragraph (f) by removing ''31.205–24''.

[FR Doc. 03–16982 Filed 7–3–03; 8:45 am]

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1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
200–499	(869–050–00027–0)	44.00	Jan. 1, 2003
500–End	(869–050–00028–8)	58.00	Jan. 1, 2003
11	(869–050–00029–6)	38.00	Jan. 1, 2003
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–050–00031–8)	38.00	Jan. 1, 2003
220–299	(869–050–00032–6)	58.00	Jan. 1, 2003
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–050–00038–5)	60.00	Jan. 1, 2003
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–050–00041–5)	47.00	Jan. 1, 2003
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–048–00049–6)	55.00	Apr. 1, 2002
240–End	(869–050–00051–2)	62.00	Apr. 1, 2003
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
*141–199	(869–050–00055–5)	58.00	Apr. 1, 2003
200–End	(869–050–00056–3)	30.00	Apr. 1, 2003
20 Parts:			
*1–399	(869–050–00057–1)	50.00	Apr. 1, 2003
*400–499	(869–050–00058–0)	63.00	Apr. 1, 2003
500–End	(869–050–00059–8)	63.00	Apr. 1, 2003
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–050–00061–0)	47.00	Apr. 1, 2003
170–199	(869–050–00062–8)	50.00	Apr. 1, 2003
200–299	(869–050–00063–6)	17.00	Apr. 1, 2003
300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
500–599	(869–050–00065–2)	47.00	Apr. 1, 2003
600–799	(869–050–00066–1)	15.00	Apr. 1, 2003
800–1299	(869–048–00066–6)	56.00	Apr. 1, 2002
1300–End	(869–050–00068–7)	22.00	Apr. 1, 2003
22 Parts:			
1–299	(869–048–00068–2)	59.00	Apr. 1, 2002
*300–End	(869–050–00070–9)	44.00	Apr. 1, 2003
23	(869–050–00071–7)	44.00	Apr. 1, 2003
24 Parts:			
0–199	(869–050–00072–5)	58.00	Apr. 1, 2003
200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
700–1699	(869–050–00075–0)	61.00	Apr. 1, 2003
1700–End	(869–050–00076–8)	30.00	Apr. 1, 2003
25	(869–050–00077–6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0-1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–050–00079–2)	63.00	Apr. 1, 2003
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–048–00080–1)	44.00	Apr. 1, 2002
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441-1.500	(869-050-00083-1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–048–00084–4)	57.00	Apr. 1, 2002
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503-2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–048–00090–9)	39.00	Apr. 1, 2002
40–49	(869–050–00093–8)	26.00	Apr. 1, 2003
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–050–00095–4)	61.00	Apr. 1, 2003
500–599	(869–050–00096–2)	12.00	[5] Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date
27 Parts:			
*1–199	(869–050–00098–9)	63.00	Apr. 1, 2003
*200–End	(869–050–00099–7)	25.00	Apr. 1, 2003
28 Parts:			
0-42	(869–048–00098–4)	58.00	July 1, 2002
43-end	(869-048-00099-2)	55.00	July 1, 2002
29 Parts:			
0–99	(869–048–00100–0)	45.00	[8]July 1, 2002
100–499	(869–048–00101–8)	21.00	July 1, 2002
500–899	(869–048–00102–6)	58.00	July 1, 2002
900–1899	(869–048–00103–4)	35.00	July 1, 2002
1900–1910 (§§ 1900 to 1910.999)	(869–048–00104–2)	58.00	July 1, 2002
1910 (§§ 1910.1000 to end)	(869–048–00105–1)	42.00	[8]July 1, 2002
1911–1925	(869–048–00106–9)	29.00	July 1, 2002
1926	(869–048–00107–7)	47.00	July 1, 2002
1927–End	(869–048–00108–5)	59.00	July 1, 2002
30 Parts:			
1–199	(869–048–00109–3)	56.00	July 1, 2002
200–699	(869–048–00110–7)	47.00	July 1, 2002
700–End	(869–048–00111–5)	56.00	July 1, 2002
31 Parts:			
0–199	(869–048–00112–3)	35.00	July 1, 2002
200–End	(869–048–00113–1)	60.00	July 1, 2002
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–048–00114–0)	56.00	July 1, 2002
191–399	(869–048–00115–8)	60.00	July 1, 2002
400–629	(869–048–00116–6)	47.00	July 1, 2002
630–699	(869–048–00117–4)	37.00	July 1, 2002
700–799	(869–048–00118–2)	44.00	July 1, 2002
800–End	(869–048–00119–1)	46.00	July 1, 2002
33 Parts:			
1–124	(869–048–00120–4)	47.00	July 1, 2002
125–199	(869–048–00121–2)	60.00	July 1, 2002
200–End	(869–048–00122–1)	47.00	July 1, 2002
34 Parts:			
1–299	(869–048–00123–9)	45.00	July 1, 2002
300–399	(869–048–00124–7)	43.00	July 1, 2002
400–End	(869–048–00125–5)	59.00	July 1, 2002
35	(869–048–00126–3)	10.00	[7]July 1, 2002
36 Parts			
1–199	(869–048–00127–1)	36.00	July 1, 2002
200–299	(869–048–00128–0)	35.00	July 1, 2002
300–End	(869–048–00129–8)	58.00	July 1, 2002
37	(869–048–00130–1)	47.00	July 1, 2002
38 Parts:			
0–17	(869–048–00131–0)	57.00	July 1, 2002
18–End	(869–048–00132–8)	58.00	July 1, 2002
39	(869–048–00133–6)	40.00	July 1, 2002
40 Parts:			
1–49	(869–048–00134–4)	57.00	July 1, 2002
50–51	(869–048–00135–2)	40.00	July 1, 2002
52 (52.01–52.1018)	(869–048–00136–1)	55.00	July 1, 2002
52 (52.1019–End)	(869–048–00137–9)	58.00	July 1, 2002
53–59	(869–048–00138–7)	29.00	July 1, 2002
60 (60.1–End)	(869–048–00139–5)	56.00	July 1, 2002
60 (Apps)	(869–048–00140–9)	51.00	[8]July 1, 2002
61–62	(869–048–00141–7)	38.00	July 1, 2002
63 (63.1–63.599)	(869–048–00142–5)	56.00	July 1, 2002
63 (63.600–63.1199)	(869–048–00143–3)	46.00	July 1, 2002
63 (63.1200-End)	(869–048–00144–1)	61.00	July 1, 2002
64–71	(869–048–00145–0)	29.00	July 1, 2002
72–80	(869–048–00146–8)	59.00	July 1, 2002
81–85	(869–048–00147–6)	47.00	July 1, 2002
86 (86.1–86.599–99)	(869–048–00148–4)	52.00	[8]July 1, 2002
86 (86.600–1–End)	(869–048–00149–2)	47.00	July 1, 2002
87–99	(869–048–00150–6)	57.00	July 1, 2002
100–135	(869–048–00151–4)	42.00	July 1, 2002
136–149	(869–048–00152–2)	58.00	July 1, 2002
150–189	(869–048–00153–1)	47.00	July 1, 2002
190–259	(869–048–00154–9)	37.00	July 1, 2002
260–265	(869–048–00155–7)	47.00	July 1, 2002
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–048–00157–3)	43.00	July 1, 2002
400–424	(869–048–00158–1)	54.00	July 1, 2002
425–699	(869–048–00159–0)	59.00	July 1, 2002
700–789	(869–048–00160–3)	58.00	July 1, 2002
790–End	(869–048–00161–1)	45.00	July 1, 2002
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–048–00163–8)	43.00	July 1, 2002
102–200	(869–048–00164–6)	41.00	July 1, 2002
201–End	(869–048–00165–4)	24.00	July 1, 2002
42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9]Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9]Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9]Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–048–00196–4)	38.00	[9]Oct. 1, 2002
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
100–185	(869–048–00198–1)	60.00	Oct. 1, 2002
186–199	(869–048–00199–9)	18.00	Oct. 1, 2002
200–399	(869–048–00200–6)	61.00	Oct. 1, 2002

Title	Stock Number	Price	Revision Date
400–999	(869–048–00201–4)	61.00	Oct. 1, 2002
1000–1199	(869–048–00202–2)	25.00	Oct. 1, 2002
1200–End	(869–048–00203–1)	30.00	Oct. 1, 2002
50 Parts:			
1–17	(869–048–00204–9)	60.00	Oct. 1, 2002
18–199	(869–048–00205–7)	40.00	Oct. 1, 2002
200–599	(869–048–00206–5)	38.00	Oct. 1, 2002
600–End	(869–048–00207–3)	58.00	Oct. 1, 2002
CFR Index and Findings Aids	(869–050–00048–2)	59.00	Jan. 1, 2003
Complete 2003 CFR set		1,195.00	2003
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Subscription (mailed as issued)		298.00	2003
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Complete set (one-time mailing)		290.00	2001

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.