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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 214, 245, 248 and 299

[CIS No. 2080–00]

RIN 1615–AA10

Certificates for Certain Health Care Workers

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security (DHS) regulations to provide that organizations previously authorized to issue health care worker certifications will continue to be permitted to issue certifications for a temporary period of time, and to set up procedures for authorizing organizations to issue the certificates, including an appeals process in the event that requests for authorization are denied. In addition, this rule adds the requirement that all nonimmigrants coming to the United States for the primary purpose of performing labor as health care workers, including those seeking a change of nonimmigrant status, be required to submit a health care worker certification. Publication of this rule will ensure more uniformity in the adjudication of petitions and admissibility determinations for aliens seeking to enter the United States to engage in labor as health care workers. On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to the DHS, pursuant to the Homeland Security Act of 2002 (Public Law 107–296). Accordingly, the Service's adjudications functions transferred to the Bureau of Citizenship and Immigration Services (BCIS) of the DHS, and the Service's inspections functions transferred to the Bureau of Customs and Border Protection (CBP). The DHS now has the authority to make revisions to what were previously Service regulations. For the sake of simplicity, this rule will no longer refer to the Service but rather DHS, even though meetings and publication of the previous interim rules, publication of the proposed rule, and receipt of comments took place under the Service prior to March 1, 2003.

DATES: This final rule is effective on September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Mari F. Johnson, Adjudications Officer, Office of Adjudications, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on October 11, 2002, at 67 FR 63313. The rule proposed to implement section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104–208, 110 Stat. 3009, 636–37 (1996), now codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. 1182(a)(5)(C), and section 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, codified at section 212(r) of the Act, 8 U.S.C. 1182(r).

What Are the Provisions of Sections 212(a)(5)(C) and (r) of the Immigration and Nationality Act (Act)?

Section 343 of IIRIRA created a new ground of inadmissibility. It provides that, subject to section 212(r) of the Act, an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of the Department of Health and Human Services (HHS), verifying that:

(1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic; and, in the case of a license, unencumbered;

(2) The alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write English; and

(3) If a majority of States licensing the profession in which the alien intends to work recognize a test predicting an applicant's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 212(r) of the Act created an alternative certification process for aliens who seek to enter the United States for the purpose of performing labor as a nurse. In lieu of a certification under the standards of section 212(a)(5)(C) of the Act, an alien nurse can present to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from CGFNS (or an equivalent independent credentialing organization approved for the certification of nurses) that:

(1) The alien has a valid and unrestricted license as a nurse in a state where the alien intends to be employed and that such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) The alien has passed the National Council Licensure Examination (NCLEX); and

(3) The alien is a graduate of a nursing program that meets the following requirements:

(i) The language of instruction was English; and

(ii) The nursing program was located in a country which:

(A) Was designated by CGFNS no later than 30 days after the enactment of the NRDAA, based on CGFNS' assessment that designation of such country is justified by the quality of nursing education in that country, and the English language proficiency of

those who complete such programs in that country; or

(B) Was designated on the basis of such an assessment by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses; and

(iii) The nursing program:

(A) Was in operation on or before November 12, 1999; or

(B) Has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses.

CGFNS designated the following countries for purposes of this alternate certification: Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom, and the United States.

How Were These Requirements Implemented?

Section 212(a)(5)(C) of the Act became effective upon enactment on September 30, 1996. Shortly thereafter, the DHS met with HHS, the Department of Labor (DOL), the Department of Education (DoED), the Department of Commerce (DOC), the Office of the United States Trade Representative (USTR), and the Department of State (DOS) to reach consensus on the best approach for implementation of the new provision. The DHS also met with interested private organizations including CGFNS, the American Occupational Therapists Association, the National Board for Certification in Occupational Therapy (NBCOT), the Federated State Board of Physical Therapy, and the American Physical Therapy Association.

Section 343 of IIRIRA and NRDAA, was implemented via three interim rules published in the **Federal Register** as follows:

(1) Interim Procedures for Certain Health Care Workers, 63 FR 55007 (October 14, 1998) (codified at 8 CFR 212.15 and 245.14) (the first Interim Rule);

(2) Additional Authorization to Issue Certificates for Foreign Health Care Workers, 64 FR 23174 (April 30, 1999) (amending 8 CFR 212.15) (the second Interim Rule); and

(3) Additional Authorization to Issue Certificates for Foreign Health Care Workers; Speech Language Pathologists and Audiologists, Medical Technologists and Technicians, and Physician Assistants, 66 FR 3440 (January 16, 2001) (amending 8 CFR 212.15) (the third Interim Rule).

The supplementary information pertaining to the October 11, 2002, proposed rule describes these earlier rules in more detail.

The organizations that have already been granted authority to issue certifications under these interim rules, other than CGFNS, shall be required to seek authority to issue certifications under the provisions of this final rule. However, those organizations will retain interim authority to continue issuing certificates and certified statements provided that they submit a request for continued authorization on Form I–905, Application for Authorization to Issue Health Care Worker Certificates, on or before January 27, 2004. and during the period that the Form I–905 is pending adjudication with the DHS. The DHS will not require CGFNS to apply for authorization to issue certificates or certified statements for those seven health care occupations named in the legislative history to IIRIRA. However, CGFNS will be required to submit information regarding its certification processes via filing of Form I–905 without fee with the Director, Nebraska Service Center, on or before January 27, 2004. The DHS will review CGFNS' Form I–905 for content of the certificates for the seven health care occupations, and content of certified statements for nurses, and to ensure compliance with the universal standards set forth in this rule. Like other credentialing organizations, CGFNS will also be subject to ongoing review by the DHS, and termination of credentialing status for noncompliance with this rule. Further, the DHS will terminate the authority of any organization currently authorized to issue certificates or certified statements if the organization does not submit an application or provide information on Form I–905 on or before January 27, 2004.

What Were the Provisions of the First Interim Rule?

The DHS in consultation with HHS initially identified, on the basis of the legislative history, seven categories of health care workers subject to the provisions of section 212(a)(5)(C) of the Act. See H.R. CONF. REP. NO. 104–828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. *See* 63 FR at 55008.

In the first Interim Rule, CGFNS and the NBCOT were authorized to issue certificates to immigrant nurses and occupational therapists respectively, established the appropriate English language competency levels for foreign nurses and occupational therapists, and specified exemptions from English language proficiency testing.

The first Interim Rule applied only to immigrants. The DHS and DOS exercised their discretion under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), to waive the foreign health care worker certification requirement for nonimmigrant health care workers until promulgation of final implementing regulations. The DHS and DOS exercised their waiver discretion after carefully considering the complexity of the implementation issues, including how the health care certificate requirements affect United States obligations under international agreements and the need for health care facilities across the country to remain fully staffed and provide a high quality of service to the public. The waiver of inadmissibility applied to nonimmigrant health care workers already in possession of nonimmigrant visas and visa exempt aliens, including Canadians applying for classification under section 214(e) of the Act, 8 U.S.C. 1184(e) Trade NAFTA (TN) classification.

What Were the Provisions of the Second Interim Rule?

In the second Interim Rule, CGFNS was temporarily authorized to issue certificates to immigrant occupational therapists and physical therapists, it also temporarily authorized the Foreign Credentialing Commission on Physical Therapy (FCCPT) to issue certificates to immigrant physical therapists, and established the appropriate English language competency levels for physical therapists. The DHS, in consultation with HHS, found that both CGFNS and FCCPT met the ''established track record'' criterion, and concluded that there was a sustained level of demand for occupational therapists and physical therapists.

What Were the Provisions of the Third Interim Rule?

In the third Interim Rule, CGFNS was temporarily authorized to issue certificates to immigrant speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), physician assistants, and medical technicians (also known as clinical laboratory technicians), listed the passing scores for the English language tests for those health care occupations, and amended the regulations concerning which organizations may administer the English language tests. The DHS also modified the criteria it had used in the first and second Interim Rules to

temporarily authorize organizations to issue certificates to immigrant health care workers. CGFNS was found to have an established track record in issuing certificates for the additional occupations.

What Were the Provisions of the H–1C Interim Rule Published on June 11, 2001?

A related interim rule was published in response to the passage of the NRDAA, Petitioning Requirements for the H–1C Nonimmigrant Classification under Public Law 106–95, 66 FR 31107 (June 11, 2001) (amending 8 CFR 214.2(h)). Among other things, the NRDAA created an alternative certification process for foreign nurses only, as provided in section 212(r) of the Act. In the H–1C rule, the DHS announced that it would continue to waive the certification requirements for nonimmigrant nurses, pending the promulgation of new regulations implementing both certification processes.

What Provisions Were Contained in the Proposed Rule Published on October 11, 2002?

In the October 11, 2002, rule, the DHS proposed to implement a comprehensive process for the certification of foreign health care workers under sections 212(a)(5)(C) and (r) of the Act. It addresses foreign health care workers coming to the United States on a temporary basis (nonimmigrant aliens) as well as on a permanent basis (immigrants).

This rule proposed to amend 8 CFR 212.15 by:

(1) Specifying which organizations are authorized to issue certificates (8 CFR 212.15(e));

(2) Describing the required content of the certificate itself (8 CFR 212.15(f));

(3) Specifying the English language requirements for certification (8 CFR 212.15(g));

(4) Implementing the alternative certification process for foreign nurses and the required content of the certified statement (8 CFR 212.15(h));

(5) Establishing a streamlined certification process for certain nurses, occupational therapists, physical therapists, and speech language pathologists and audiologists (8 CFR 212.15(i));

(6) Describing the procedure to qualify as a certifying organization (8 CFR 212.15(j));

(7) Listing the standards that an organization must meet in order to obtain and retain authorization to issue foreign health care worker certifications (8 CFR 212.15(k)); and

(8) Providing for periodic review of the performance of certifying organizations (8 CFR 212.15(l)) and the termination of their authority (8 CFR 212.15(m)).

The rule also proposed to amend 8 CFR 103.1 by specifying at new paragraphs (f)(3)(iii)(QQ) and (RR) that the Associate Commissioner for Examinations exercises appellate jurisdiction over applications for authorization to issue foreign health care worker certifications, and the termination of authorization to issue foreign health care worker certifications.

The rule proposed to amend 8 CFR 103.7(b)(1) by adding a fee for filing Form I–905, Application for Authorization to Issue Certification for Health Care Workers. This form was previously approved for use in order to ensure that organizations formally seeking authorization to issue health care worker certificates or certified statements will be able to submit complete and uniform applications. However, because the authorization process was never implemented through a final regulation, the Form I–905 has not yet been distributed for public use.

The rule also proposed to amend 8 CFR 214.1(h) by adding a requirement that an alien who seeks to enter the United States for the purpose of performing labor in a health care occupation must present a foreign health care worker certification to the DHS in accordance with 8 CFR 212.15(d).

The rule further proposed to amend 8 CFR 248.3 by adding paragraph (i) to mandate that a nonimmigrant seeking a change of status to perform labor in a health care occupation must submit a foreign health care worker certification.

Discussion of Comments

What Comments Were Received in Response to the Proposed Rule?

Thirty-three comments were received from a variety of individuals and organizations including health care workers, attorneys, professional organizations, U.S. Government organizations, foreign government officials, and organizations granted authority to issue certifications to health care workers. The comments addressed many aspects of the proposed rule. For the sake of clarity, this section will summarize the justification for the regulatory amendments contained in the proposed rule and then discuss the comments that relate to the specific amendment.

It must be noted that the proposed rule generated a number of comments that were not related to the issue of certifications for health care workers. For example, two commenters discussed the general issue of the DHS' role in the importation of nurses to the United States while another commented on the issue of Social Security cards and licenses for nurses. One commenter discussed an alleged contradiction in the statutory language. These comments will not be discussed because they are not germane to the proposed rule.

Ten commenters made general observations on the impact of the rule on health care in the United States. Nine of the commenters provided that the rule will have an adverse affect on health care in the United States because it will make it harder for facilities to recruit, hire, and retain foreign health care workers. The commenters stated that the implementation of the regulation will result in increased backlogs and create difficulties for aliens attempting to enter the United States. The other commenter stated that CGFNS will have a difficult time processing the number of requests it will receive for certifications. One commenter stated that the regulation takes away the authority of hospital administrators to make decisions with respect to health care issues. Finally, one commenter stated that the regulation was not flexible and would create operational difficulties for health care facilities.

The statutory provisions relating to the certification process are complex. In drafting the previous interim rules, the proposed rule, and this final rule, every attempt has been made to minimize the adverse affects that they would have on health care facilities and health care workers and, at the same, ensure that they reflect the intent of Congress.

Aliens Who are Subject to the Health Care Certification Requirements

The DHS took the position in the proposed rule that the requirements of section 212(a)(5)(C) of the Act apply to both immigrants and nonimmigrants who seek to enter the United States for the purpose of performing labor as a health care worker. Physicians are explicitly exempted from the certification requirement by the statute and, therefore, are not covered by this rule.

Further, the DHS held that with respect to immigrants, the certification requirement applies to both aliens overseas who are seeking an immigrant visa, and aliens in the United States who are applying for adjustment of status to that of a permanent resident. The DHS interprets the statutory language, ''any alien who seeks to enter the United States for the purpose of

performing labor as a health care worker * * *'' with respect to immigrants, to limit the scope of this provision to aliens with an approved employment-based (EB) preference petition under section 203(b) of the Act, 8 U.S.C. 1153(b), to perform labor in a covered health care occupation. Therefore, an alien is not subject to section 212(a)(5)(C) of the Act if he or she is seeking an immigrant visa or adjustment of status on any other basis pursuant to a family-sponsored petition under section 203(a) of the Act, 8 U.S.C. 1153(a), an EB preference petition for a non-health care occupation; under section 209 of the Act, 8 U.S.C. 1159 (adjustment of status of refugees); under section 210 of the Act, 8 U.S.C. 1160 (special agricultural workers), or pursuant to section 240A of the Act, 8 U.S.C. 1229b (cancellation of removal); under section 249 of the Act, 8 U.S.C. 1259 (record of admission for permanent residence); or under any other statutory provision relating to admission as an immigrant.

With respect to nonimmigrant aliens, the proposed rule applied the certification requirement to all aliens who have obtained nonimmigrant status for the purpose of performing labor as a health care worker, including, but not limited to, those aliens described in sections 101(a)(15)(H), (J), and (O) of the Act, 8 U.S.C. 1101(a)(15), and aliens entering pursuant to section 214(e) of the Act, 8 U.S.C. 1184(e), as TN professionals.

The DHS also proposed that a nonimmigrant entering the United States to receive training in an occupation listed at 8 CFR 212.15(c) will not be required to obtain a health care certification. This includes, but is not limited to, F–1 nonimmigrants receiving practical training and J–1 nonimmigrants coming to the United States to undertake a training program in a medical field. Nonimmigrant aliens entering the United States to receive training in a health care occupation fall outside the ambit of section 212(a)(5)(C) of the Act because they are not independently performing the full range of duties of their occupation and, therefore, are not entering for the purpose of performing labor as a health care worker. Their primary purpose in the U.S. is not to perform health care but is rather to receive training.

Finally, the DHS concluded in the proposed rule that the alien health care certification requirement should not be applied to the spouse and dependent children of an immigrant or nonimmigrant. Dependent aliens enter the United States for the primary purpose of accompanying the principal alien, not to perform labor as a health care worker, or in any other field. A dependent alien derives his or her nonimmigrant status from his or her familial relationship with the principal alien and is not required to work in a particular occupational field or for a specific employer to maintain his or her status. Accordingly, regardless of whether or not a dependent alien may intend to work in a health care occupation listed at 8 CFR 212.15(c), he or she would not be subject to the health care worker certification requirement.

Eighteen comments were received in response to this portion of the proposed rule. Four commenters stated that all nonimmigrant aliens should be covered by section 212(a)(5)(C) of the Act. Six commenters suggested that section 212(a)(5)(C) of the Act should not apply to TN nonimmigrants because it conflicts with the terms of the North American Free Trade Agreement (NAFTA).

The DHS carefully considered these comments. However, as noted in the proposed rulemaking, based on our consideration of the relevant statutory provisions, legislative history, judicial precedent, and our prior rulemakings, the DHS has concluded that the health care certification requirement is intended to apply to all nonimmigrant health care workers. The legislative history of IIRIRA confirms that, in this instance, the DHS may not rely on the commenters' assertions regarding an alleged conflict with NAFTA to reach a different result. *See* H.R. CONF. REP. NO. 104–828 at 226–27 (1996).

Four commenters also stated that the certification requirement should be applied to the spouse and dependent children of an immigrant or nonimmigrant alien. One commenter stated that nonimmigrant aliens coming to the United States to obtain training, such as F–1 and J–1 nonimmigrants, should not be required to obtain a certificate while two commenters suggested that they should. Likewise, two commenters suggested that an H–3 alien should also be exempt from the provision because an H–3 alien is also coming to the United States to obtain training. Finally, one commenter suggested that the DHS specifically list the nonimmigrant aliens exempted from the certification requirements in the final regulation.

The DHS will not require dependent aliens to obtain a certificate even if they will eventually be employed in a covered health care occupation. Sections 212(a)(5)(C) and 212(r) of the Act relate to grounds of inadmissibility. Since dependent aliens enter the United States for the primary purpose of accompanying the principal alien, they are not coming to the United States to perform labor as a health care worker, or in any other field, and they will not be required to obtain a certification.

Further, the DHS will not list the specific aliens exempted from the requirement to obtain health care certificates. The language contained in the proposed rule at 8 CFR 212.15(a)(1) provides that the provision applies only to those aliens coming to the United States for the primary purpose of performing labor in a health care occupation. This language clearly does not apply to a nonimmigrant alien coming to the United States for training, including an H–3 nonimmigrant alien. Further, the listing of specific nonimmigrant classifications in the regulation may be erroneously interpreted by some to limit the exemption to those nonimmigrants specifically listed in the regulation.

Health Care Workers Who Were Trained in the United States, or Who Are in Possession of a Valid State License

The proposed rule provided that possession of a state license does not exempt a foreign health care worker from compliance with the certification requirement.

As stated in the proposed rule, this conclusion was reached after considering the language of the statute, and after consultation with HHS. Nothing in the text of section 212(a)(5)(C) of the Act relieves alien health care workers of this requirement, on the ground that they were trained in the United States or are already licensed here. Moreover, the certification requires that any state license the alien may already have is unencumbered. Indeed, had Congress intended to exempt such aliens from the certification requirement, it would not have explicitly provided that the certification must document the fact of an alien=s successful passage of any test or examination that is accepted as evidence of an applicant's likely success on a state licensing examination, if a majority of States recognize such a pre-licensing test or examination. In addition, in NRDAA, Congress explicitly addressed whether a foreign nurse, in possession of a full and unrestricted license issued by the state of intended employment, should be subject to the certification requirement. The NRDAA created a less onerous, alternative method of certification for foreign nurses who have unrestricted state licenses and meet certain other conditions, as provided in section 212(r) of the Act. The fact that Congress has chosen not to provide a less rigorous

alternative certification option to state-licensed foreign health care workers other than nurses supports the inference that Congress intended state-licensed foreign health care workers to comply with the certification process.

In addition to the statutory scheme, there are policy considerations that mitigate in favor of applying the certification requirement to state-licensed foreign health care workers. The state screening process alone would not demonstrate that the other two prongs of the certification requirement, English language competency, and comparable training and unencumbered licensing, had been met. First, the state screening process does not always measure English proficiency. Second, HHS had advised that the state screening process may not always discover encumbrances and restrictions on a license.

The statute and legislative history are silent with respect to whether foreign health care workers, who received their training in the United States, are subject to the certification process. While such aliens would satisfy the comparable training certification requirements, their licensure would not be verified, as required by the statute. Given the lack of evidence of congressional intent that such aliens be exempt from the reach of section 212(a)(5)(C) of the Act, the DHS has concluded that foreign health care workers who received their training in the United States must comply with the certification requirement. The DHS will not modify the proposals contained in the proposed rule to wholly exempt foreign health care workers who received their training in the United States or who hold a license to practice in the United States.

One commenter suggested that the verification requirement for nurses at proposed 8 CFR 212.15(h)(2)(i) be amended to include the parenthetical phrase A(including reliance on evidence provided by the alien)'' after the word Averified.'' Under the suggested language, credentialing organizations would not be permitted to second-guess a state's licensure verification. The DHS will not adopt this proposal. The statutory language at section 212(r) of the Act authorizes CGFNS or any other authorized credentialing organization to verify that the alien has a valid and unrestricted license in a state where the alien intends to be employed, and that such state verifies that the foreign licenses of alien nurses are authentic and unencumbered. The DHS does not have the authority under the statute to determine whether or not a state verifies that the foreign licenses of alien nurses are authentic and unencumbered, nor does the DHS have the authority to prevent CGFNS or any other authorized credentialing organization from making such a finding before issuing certification.

The proposed rule invited comments regarding the feasibility of having a more streamlined certification process for those who train in the United States or who are already licensed here, and regarding specific proposals on how to adopt such a policy.

The DHS received four comments in response to the request for suggestions relating to a streamlined certification process. Three commenters stated that the DHS should develop a streamlined approach without providing any suggested process while one commenter, CGFNS, provided a detailed description of a proposed process.

The CGFNS proposed that an alien nurse who graduated from an entry-level program accredited by the National League for Nursing Accreditation Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE) would be exempt from the educational comparability review and English language proficiency testing. The CGFNS also proposed that aliens educated in the United States in any other named discipline and who have graduated from a program accredited by the discipline would be evaluated under this same process.

Pursuant to section 343 of IIRIRA, HHS, in consultation with the Secretary of Education, is required to establish a level of competence in oral and written English which is appropriate for the health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write.

The statute vests the Secretary of HHS with the ''sole discretion'' to determine the standardized tests and appropriate minimum scores required by section 343 of IIRIRA. Because the organizations identified as the accrediting bodies for nursing go through a rigorous review prior to being recognized by the DoED, HHS has agreed that the proposal to accept graduation from an NLNAC or CCNE accredited program in lieu of a review of educational comparability and English proficiency has merit. Accordingly, the proposal will be adopted in the final rule. It will shorten the certification process required for health care workers educated in the United States. It will also allow CGFNS and any approved organization to comply with the statutory requirements and, at the same time, ease the burden on certain health care workers. This proposal has been implemented in this final rule at 8 CFR 215.15(i).

In addition, HHS has agreed to accept graduation from the following programs in lieu of a review of educational comparability and English proficiency:

(1) For occupational therapists, graduation from a program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA);

(2) For physical therapists, graduation from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA); and

(3) For speech language pathologists and audiologists, graduation from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA).

However, the proposal that aliens educated in the United States in any other named discipline and who have graduated from a program accredited by the discipline would be evaluated under this same process will not be adopted as general provision, because specific accrediting bodies for other professions were not suggested. The HHS will continue to review further proposals for each profession on a case-by-case basis.

Health Care Occupations That Are Subject to 8 U.S.C. 1182(a)(5)(C)

In the proposed rule, based on congressional history, seven categories of health care workers subject to the health care certification requirements were identified. See H.R. CONF. REP. NO. 104–828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. *See* the first Interim Rule. The conference report also provided that the DHS could designate additional health care occupations subject to certification by regulation. Since the DHS had limited agency expertise with health care occupations and issues, it consulted extensively with HHS, the agency generally responsible for overseeing health care occupations and other related health care issues in the United States, with respect to the question of whether aliens in additional health care occupations should be required to comply with 8 U.S.C. 1182(a)(5)(C).

The proposed rule identified two factors relevant to the consideration of which health care occupations fall under the ambit of section 212(a)(5)(C) of the Act. The first factor is whether the health care occupation generally requires a license in a majority of the states. This factor reflects the states' historical and practical experience in distinguishing between those health care occupations requiring extensive regulation and those occupations that do not. At the advice of HHS, DHS has included the District of Columbia. While not a state, Washington, DC, has its own licensing authorities and should be included when determining whether a majority of states recognize a licensure or certification predictor exam.

The second factor is whether the health care worker has a direct effect on patient care, or, in other words, whether a health care worker in that occupation could reasonably pose a risk to patient health.

In response to this proposal, CGFNS suggested that a third factor should be considered in determining whether an occupation should be included in the certification process. The CGFNS suggested that an additional factor that should be considered is whether a significant number of foreign nationals enter the United States workforce for the purpose of performing labor in a particular health care occupation. The CGFNS noted that it would not be prudent to spend the time and resources required to establish a certification process for a particular occupation in which very few foreign workers are seeking employment.

The DHS has considered using the factor suggested by CGFNS. It would be difficult to accurately measure the number of ''foreign'' workers in a given occupation at a particular point in time, and the labor market for any occupation is subject to fluctuations. As the DHS is not currently adding any other occupations to the list of seven occupations requiring certification or certified statements, the DHS will not adopt the suggestion to evaluate inclusion of an occupation based on the number of foreign nationals seeking to enter the United States workforce in that occupation.

Under the proposed rule, health care workers such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry would not be required to comply with the certification requirement. In contrast, health care workers, such as supervisory physical therapists, who may not typically be involved in hands-on patient care but do have a direct effect on patient care, would be subject to the certification requirements. In the proposed rule, the DHS acknowledged that the job descriptions of certain occupations that could be added to the list may differ in other countries from the United States definition of the occupation. The differences may create confusion about which occupation is subject to certification. The DHS suggested that a possible solution would be to define each health care occupation subject to certification in this final rule. The DHS again invited comments regarding the need to define a health care occupation that is subject to certification.

In response to this provision, the DHS received nine comments. Three commenters suggested that the list of occupations be expanded to include additional occupations including Radiation Therapists and Radiological Technologists. Two commenters suggested that the current list of occupations be retained. Three commenters suggested that the DHS should define a health care occupation as any occupation that requires a license to provide direct and indirect patient care. Another commenter suggested that a health care occupation is any occupation that involves patient care. Finally, one commenter suggested that job descriptions should be used to define a health care occupation.

After reviewing the comments, the DHS will not include a specific definition of each health care occupation subject to certification in the regulation at this time. The definitions offered by the commenters were not sufficiently specific and could cover a range of occupations not contemplated by the legislative history. Further, the suggestions have not addressed concerns that the job descriptions of occupations may differ between the United States and other countries. The DHS will continue the past practice of examining the duties of the position offered to the foreign worker to determine if the position falls into one of the listed health care occupations. The practice of continuing to review the duties of the prospective position on a case by case basis will allow for a thorough evaluation of each application and a determination based on the merits of the case rather than the petitioner's or applicant's ability to make the duties of the position conform to a narrow definition.

When To Submit the Certification to the DHS

The statutory language at section 212(a)(5)(C) of the Act requires certain aliens seeking to enter the United States for the purpose of performing labor as a health care worker to present a certificate from CGFNS or an equivalent credentialing organization to the consular officer or, in the case of an adjustment of status, the Attorney General. In the proposed rule, the DHS also provided that the certification must be used for initial admission into the United States or for a change of status within 5 years of the date that it was issued.

Two comments were received in response to this proposal. One commenter suggested that the organization that issues the certification send it directly to either the DHS or, if the alien is outside the United States, to the consular post. Since the adoption of this suggestion would be contrary to statute, the requirement that the certificate be presented to a consular officer at the time of visa issuance and to the DHS at the time of admission or adjustment of status will continue in this final rule.

The other commenter suggested that the certification should be valid indefinitely. While the proposed regulation did not establish a validity date for the certification, it did require that it be submitted to the appropriate entity within 5 years of its issuance. The purpose of this proposal is to ensure that when the certification is submitted, the holder still has the appropriate language and technical skills to perform the duties of the occupation in the United States. Foreign licenses may be encumbered and therefore invalid after a prolonged period of time. Additionally, it is quite possible that over the course of time that the alien may lose certain skills necessary to safely perform the duties of the occupation in the United States. The 5-year submission period provides a basis to ensure that the holder of the certificate continues to meet the regulatory requirements for issuance of the certificate. The proposed rule also provided that if an alien seeking entry to the United States to perform labor in a particular health care occupation has already presented the certification and been admitted as a nonimmigrant, an immigrant, or has adjusted to permanent resident status, he or she will not be required to present the certificate again when he or she makes future applications for admission to the United States to perform labor in that particular health care occupation. The presentation of a Form I–94 issued to the alien at the initial admission to the United States, or a fee receipt showing that the alien was processed for admission under NAFTA would be used, if required, as evidence that the

alien has previously presented a foreign health care worker certificate for a particular health care occupation. Similarly, such an alien would not have been required to again present the foreign health care worker certificate to the DHS, with an application for extension of status to perform labor in that particular health care occupation.

The DHS received no comments on this proposal. However, after considering the impact of this provision, the DHS has determined that it will only accept a valid health care worker certificate or certified statement as evidence that the alien is admissible. Currently, an alien is generally required to surrender the departure stub of Form I–94 upon departure from the United States. Controlling the departure of aliens is consistent with the DHS's efforts to fulfill a congressional mandate to implement a comprehensive entry-exit program by 2005. As a result, many aliens will not be able to present a departure stub from a previously issued Form I–94 as evidence of their continuing admissibility under section 212(a)(5)(C) of the Act. In addition, it is noted that information on a Form I–94 does not always include the occupation for an alien nonimmigrant. For this reason, even in exceptional instances where the alien is permitted to retain the departure stub of the Form I–94 when departing the United States, the DHS would not necessarily be able to use the departure stub of the Form I–94 to verify that a particular alien was previously admitted as a health care worker. Accordingly, the DHS has determined that it is in the best interest of affected aliens to require that they present valid health care worker certificates or certified statements each time they seek admission into the United States. Lawful permanent residents will not be required to present this evidence.

Implementation of the Certification Requirement

This rule adds a new 8 CFR 248.3(i) to outline the procedure for submitting the certificate to the DHS when an application is made to change nonimmigrant status within the United States.

The proposed rule also provided that, on the effective date of the final rule, nonimmigrants who have already entered the United States under a waiver of inadmissibility under section 212(d)(3) of the Act and are working as health care workers will be required to present a certificate to the DHS only if, at any point in the future, they file an application for an extension of stay, or apply for admission to the United States, whichever event occurs first.

The DHS received 13 comments in response to this provision. All 13 commenters suggested that the DHS delay the implementation of this provision for a period of time in order to ensure that the foreign health care workers already in the United States would not be adversely affected. The commenters noted that some health care workers may be required to travel outside of the United States and would not be able to obtain a certification prior to their departure. Other commenters noted that some health care workers who require an extension of their temporary stay would not be able to obtain a certification in a timely fashion and would be forced to terminate their employment at the health care facility.

The DHS believes that these comments are well-founded. The DHS is concerned about the possibility that health care facilities and the United States public will be adversely affected by an immediate implementation date. In addition, DOS also has recommended that the DHS continue to exercise its waiver authority under section 212(d)(3) of the Act for foreign health care workers for at least one year subsequent to the publication of this rule.

If this rule were effective upon publication, potentially every nonimmigrant working in one of the covered health care occupations and seeking admission into the United States would be immediately inadmissible and ineligible to work in the United States under their current nonimmigrant classifications. This would result in a serious disruption to the United States health care system, and is contrary to the intent of the rule. While the DHS does not have precise figures for the number of nonimmigrant health care workers within the United States, health care workers in general comprise a significant portion of the United States workforce. According to the 2001 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics, there are approximately 9,241,840 health care workers in the United States. Of these, approximately 2,217,990 are registered nurses; 683,790 are licensed practical nurses and licensed vocational nurses; 126,450 are physical therapists; 77,080 are occupational therapists; 94,150 are speech language pathologists and audiologists; 292,320 are medical technologists and technicians; and 56,200 are physician assistants.

Further, were this rule to be effective upon publication, there is no evidence that organizations authorized to issue health care certifications will be able to issue certifications to this potentially large group of workers within a reasonable amount of time. Not only are potentially affected health care workers required to apply for and obtain the actual certifications, but most workers would also be required to pass certain standardized English language tests as a minimum requirement to obtain certification. As discussed in this rule, one of the currently authorized English language testing organizations advised HHS and the DHS that it will no longer provide testing services to foreign health care workers because it cannot meet the demands placed upon it by foreign health care workers seeking health care certificates, and can no longer provide fair access or guarantee testing security.

In addition, health care workers abroad may be required to travel to remote locations in order to take certain tests and will require sufficient time to schedule testing and make any necessary travel arrangements. Although the tests may be offered several times a year, not all required tests are offered in one location. For example, the TSE is not always offered at the same location as the TOEFL, so a health care worker may have to go through several testing cycles in order to obtain a combination of test scores needed for certification. Finally, it should be noted that this rule is implementing the requirement that all approved credentialing organizations obtain evidence of candidate education and licensure directly from the issuing authorities. Thus, once a candidate has passed the requisite tests and submitted an application for certification, there will be additional delays while the authorized credentialing organization obtains and reviews documents such as educational transcripts and licensure materials.

After consideration of these factors, the DHS believes that it must continue the provision for temporary admission under section 212(d)(3) of the Act for a period of 1 year in order to allow for any potential delays in issuance of health care worker certification and to ensure that the United States public is not adversely affected when nonimmigrant health care workers currently employed in the United States are required to obtain certification. Therefore, the DHS has added language at 8 CFR 215.15(n) that continues in force the First Interim Rule's standing provision for temporary admission under section 212(d)(3) of the Act. An alien qualifies for this special provision only if the alien was admitted on or before July 26, 2004. Moreover, any petition or application to extend the alien's period of authorized stay or change the alien's status will be denied unless the alien obtains the required

certification no later than 1 year after the date of the alien's temporary admission.

Process for an Organization to Obtain Authorization to Issue Health Care Certificates

The statute provides that a foreign health care worker must present a certificate from CGFNS or an equivalent credentialing organization or, in the case of certain foreign nurses, a certified statement from CGFNS or an equivalent credentialing organization. In the legislative history to IIRIRA, the conferees identified seven health care occupations (which are currently reflected in 8 CFR 212.15(c)). It is reasonable to infer from the statutory designation of CGFNS as a credentialing organization that Congress considered CGFNS to possess the resources and expertise to issue certificates in at least those seven designated health care occupations. Accordingly, the DHS will not require CGFNS to apply for credentialing status with respect to those seven health care occupations. However, CGFNS will be required to submit information regarding its certification processes via filing of Form I–905 Application for Authorization to Issue Certification for Health Care Workers, without fee with the Director, Nebraska Service Center, in order to enable the DHS to review the content of its certificates for the seven health care occupations, and content of its certified statements for nurses, and ensure compliance with the universal standards set forth in this rule. Like other credentialing organizations, CGFNS will also be subject to ongoing review by the DHS, and termination of credentialing status for noncompliance with this rule.

It is less clear, however, that Congress considered whether CGFNS possessed the expertise to issue certificates for health care occupations other than the seven identified in the legislative history. Therefore, although CGFNS' statutory designation creates a strong presumption of expertise with respect to all health care occupations such that the DHS will not charge a fee for review of the Form I–905 in relation to those occupations, the DHS will require CGFNS to file an application on Form I–905 with fee under the procedures outlined at 8 CFR 212.15(j), for credentialing status with respect to any health care occupation other than the seven identified in the legislative history.

Organizations other than CGFNS may be approved to issue certificates or certified statements by submission of Form I–905 to the Director, Nebraska Service Center, with fee. The fee for Form I–905 will be $230.

For purposes of administrative ease and efficiency, the DHS will centralize all requests for designation as a credentialing organization at the Nebraska Service Center, regardless of the geographical location of the requesting organization. Centralization of these requests will enable personnel at the Nebraska Service Center to establish and maintain the appropriate contacts with HHS and DoED to assist in the adjudication of applications for credentialing status. The DHS will accord significant weight to the opinion of HHS in the adjudication of applications for credentialing status because of that agency's expertise with credentialing requirements for health care occupations and health care issues. It should be noted, however, that the DHS may deny a request for authorization on grounds unrelated to credentialing requirements for health care occupations or health care issues, despite a favorable HHS opinion. For example, the DHS may find that because an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, it would not be appropriate to authorize an organization to issue certificates or certified statements.

Two comments were received with respect to the DHS's treatment of CGFNS under the proposed rule. One commenter stated that CGFNS should not be permitted to issue certificates to medical laboratory technologists because of the large number of credentialing organizations for this occupation in the United States. The other commenter stated that the treatment of CGFNS in the proposed rule is appropriate.

The DHS will not limit the scope of CGFNS' authority to issue certificates to medical laboratory technologists. The fact that other entities have established different licensing and credentialing processes in the United States does not mean that CGFNS is unable or less qualified to issue certificates to foreign health care workers employed in the same occupation. CGFNS has been issuing certificates and certified statements to health care workers in the field of nursing, a field that has a large number of credentialing entities and with varied standards.

The proposed rule noted that Form I–905 will require the organization seeking credentialing status to:

(1) Provide a point of contact and a written, detailed description of the organization and how the organization meets the standards described in 8 CFR 212.15(k);

(2) List the health care occupations for which the organization is seeking approval to issue certificates, and describe the organization's expertise in each health care occupation for which approval to issue certificates is sought;

(3) Describe how it will process applications and issue certificates on a timely basis; and

(4) Describe the procedure it has designed in order for the DHS to verify the validity of a certificate.

The DHS will provide the organization with a written decision on its application. An organization granted authorization to issue certificates must agree to provide the DHS with all requested documentation and to allow the DHS access to its records relating to the certification process. If the application is denied, the DHS will explain the reason(s) for the denial. Applications that are denied by the DHS may be appealed to the Administrative Appeals Office pursuant to 8 CFR 103.3.

In the proposed rule, the DHS sought comments on the best method of notifying the public when new organizations are approved to issue certifications and certified statements. One method of notifying the public was through the publication of an interim rule in the **Federal Register**.

In the alternative, the DHS considered designating, by a separate and comprehensive public notice in the **Federal Register**, the list of organizations approved to issue certification. The DHS would also maintain this list on its Web site at *http://www.immigration.gov).* This method would allow the DHS to update the list of authorized organizations more quickly than through publication of interim rules.

The DHS did not receive any comments on this particular issue. However, after additional consideration, the DHS has determined that it will provide notice to the public that an organization has been approved to issue certificates and certified statements through the publication of a comprehensive notice in the **Federal Register**. As a result, this final rule provides at 8 CFR 215.15(e)(4) that the DHS will notify the public of new approved organizations authorized to issue certificates by publishing a public notice in the **Federal Register**. This rule also adds the same provision with respect to organizations authorized to issue certified statements at 8 CFR 215.15(h)(1). The DHS would maintain the list of organizations authorized to issue certificates or certified statements, or whose authorization has been

terminated, on its Web site at *http://www.immigration.gov.*

The proposed rule recognized that more than one organization could be approved to issue certifications for the same health care occupation. An alien may obtain a certificate from any organization authorized to issue certificates for that occupation.

One commenter suggested that recognizing more than one credentialing organization could create difficulties because the two organizations may establish different procedures for issuing certifications. The DHS is aware that organizations may have slightly different requirements for issuing certifications. However, the DHS is convinced that the standards established for approval guarantee that organizations will follow similar, although not identical, procedures for issuance of certifications.

This rule also adopts the language of the proposed rule and provides that the DHS's approval will be for a 5-year period of time subject to the review process described in 8 CFR 215.15(l).

Two commenters suggested that the organizations granted approval under the previously published interim rules be permitted to issue certificates for a given period of time until they could be approved under the standards listed in the final rule. The proposed rule provided that the authorization granted to organizations under the interim rules would continue pending final adjudication of its credentialing status under the provisions contained in the proposed rule.

Form I–905

The proposed rule set a filing fee of $230 for Form I–905. When establishing fees, the DHS must comply with guidance provided in the Office of Management and Budget (OMB) Circular A–25. This guidance directs federal agencies to charge the Afull cost'' of providing benefits when calculating fees that provide a special benefit to recipients. Section 6(d) of OMB Circular A–25 defined Afull cost'' as including Aall direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' The DHS determined that $230 was the appropriate fee for Form I–905 after comparing the processing of the form to the process involved with Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, which has a processing fee of $230. The DHS noted in the proposed rule that it will use $230 for the fee for the Form I–905 until the next biennial fee review, as required by the Chief Financial Officers Act of 1990, Public Law 101–576, 104 Stat. 2838.

In response to the new form, the DHS received two comments. One commenter suggested that the fee should be higher. The DHS will not increase the fee because the rationale used in the proposed rule to establish the fee is appropriate. The DHS may revise the fee after the next biennial fee review. The other commenter stated that the questions on the Form I–905 should be tailored to a specific occupation. Upon review, the DHS will not make any changes to Form I–905. The answers to the questions contained on the form will provide the DHS with the information necessary to determine an organization's eligibility to issue certifications.

The Standards an Organization Must Meet in Order To Obtain Authorization To Issue Certificates

The proposed rule lists the standards an organization must substantially meet in order to be authorized to issue certificates at 8 CFR 212.15(k). An organization seeking approval to issue certificates or certified statements should submit evidence addressing each of the standards. These standards were developed by HHS in order to ensure that an organization meets the requirements contemplated by Congress. In drafting these standards, HHS drew upon the legislative history to IIRIRA, and drew extensively from the standards of the National Commission for Certifying Agencies, a nationally recognized body that accredits certifying organizations. There are four guiding principles to the standards:

(1) The DHS should not approve a credentialing organization, unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa;

(2) The organization should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession, and the results of examinations for proficiency in the English language appropriate for the health care field in which the alien will be engaged;

(3) The organization should also maintain comprehensive and current information on foreign educational institutions, ministries of health, and foreign health care licensing jurisdictions; and

(4) If the health care field is one for which a majority of the States require a predictor examination (currently, this is done only for nursing), the organization should demonstrate an ability to conduct the examination outside the United States.

Since the statute and the report language is intended to ensure that aliens entering the United States for purposes of performing labor as a health care worker are of the same quality as United States trained workers, HHS has determined that this can be assured by requiring that organizations issuing certificates be held to a select group of standards. The DHS is concerned that in the absence of strict standards, unqualified organizations may obtain authorization from the DHS to issue certificates, which could ultimately have adverse consequences for health care in the United States. Since the provisions of section 212(r) of the Act appear to share with section 212(a)(5)(C) of the Act the goal of ensuring a high quality of health care service in the United States, the DHS will use the same standards to adjudicate applications from credentialing organizations under either provision.

The proposed rule solicited comments from the public and from interested organizations regarding the proposed standards, specifically, whether an organization seeking authorization to issue certificates may meet most, but not all of the standards. The DHS sought comment on the question of whether a prospective credentialing organization's inability to meet all of the proposed standards should preclude the DHS from authorizing the organization to issue certificates. The DHS also sought public comment on the question of whether the proposed standards should be considered as guidelines or as strict criteria that would preclude an organization from qualifying. Finally, the DHS invited public comment on the question of how a prospective credentialing organization can meet the requirement that it demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa.

In response to this proposal, the DHS received 18 comments. Four commenters stated that organizations should be required to meet all the proposed standards and that the standards should be viewed as strict criteria, not merely guidelines. Two commenters stated that the organizations must be independent and free from prejudice. One commenter suggested that the DHS remove or modify the standard that requires organizations to compare the passing rate of foreign health care workers on licensure examinations with those of United States health care workers. Another commenter suggested that tracking the performance of certificate holders would not be practical.

One commenter suggested that recognized experts should be on an organization's board while another commenter suggested that members of the health care profession should be included. One commenter suggested that the standards were so complicated that they might discourage entities from applying for approval while one commenter stated that the requirements were not specific. Three commenters stated that the credential review process developed by the approved organizations must follow established guidelines. One commenter stated that organizations should be required to solicit information from applicants seeking a certification. Finally, one commenter suggested that each organization should require that health care workers complete the same course work for each occupation.

Two commenters made suggestions relative to the composition of the organization's board, including a suggestion from one commenter that the proposed language at 8 CFR 212.15(k)(l)(vi) be amended to clarify that a not-for-profit corporation that has a self-perpetuating board of directors may still demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa. Many not-for-profit organizations have self-perpetuating boards of directors but may nevertheless be considered independent and free of material conflicts of interest under the statute. This provision was not intended to exclude not-for-profit corporations from receiving authorization to issue health care worker certifications, and the DHS recognizes that a not-for-profit organization with a self-perpetuating board of directors may yet establish that it has met the statutory requirement. Accordingly, the DHS will adopt this suggestion and has added language at 8 CFR 212.15(k)(l)(vi) to provide that not-for-profit corporations which have difficulty meeting the requirement relating to self-perpetuating boards of directors may nevertheless establish that the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa.

One commenter suggested that any credentialing organization that seeks authorization to issue health care worker certificates should be required to request evidence of an alien's degree and transcript from the issuing educational and licensing authorities, rather than accept those documents from the applicants. The DHS, in consultation with HHS, has determined that this suggestion will provide additional protection against fraudulent submissions from applicants, and will ensure the authenticity of documentation relating to an applicant's education and licensure. Accordingly, the DHS will adopt this comment and has added language at 8 CFR 212.15(k)(3)(vi).

In general, the standards as written in the proposed rule have been one of the more contentious issues in the entire health care worker certification process; however, they were developed with HHS based in part on those standards held by other currently authorized entities. The standards are voluminous and, in some situations, can be satisfied in a number of different ways. As such, the DHS has determined that these standards are best viewed as guidelines and not strict criteria. Further, since the approval of an organization by the DHS is a matter of discretion, the final rule reflects that an organization seeking approval is required to meet the majority, but not all, of the listed standards. The burden to establish eligibility, however, rests with the organization seeking approval. An organization seeking approval to issue a health care certificate should make every attempt to submit evidence addressing each of the criteria listed. It should be noted that any organization, including a state agency, for example, could be found eligible for authorization to issue certification so long as it meets the majority of the listed standards.

It is the opinion of the DHS that the standards contained in this rule are specific enough to ensure that approved organizations will develop credentialing processes that are reasonably consistent given the differences in the types of health care occupations that will be reviewed. The DHS is aware that approved organizations will be required to develop different credentialing processes because of the differences in the educational and training requirements for the affected occupations. As a result, the DHS will not dictate specific credentialing processes to the approved organizations.

Aside from modifications relating to not-for-profit corporations and the requirement that a credentialing organization obtain educational and licensing documents directly from the issuing authorities, the DHS will not modify the proposed regulation with respect to the composition of its governing board or the portion of the organization responsible for overseeing certification. The standards as currently written provide sufficient flexibility to ensure that organizations will operate in a fair and objective fashion.

The DHS will not amend the standards describing an organization's responsibility to track the performance of foreign workers holding credentials. These provisions are valuable tools for determining the effectiveness of the credentialing process and are essential to the success of the credentialing program.

Monitoring Organizations Authorized To Issue Certificates or Certified Statements

In the proposed rule, the DHS provided that it intended to develop a regulatory process to monitor credentialing organizations, including CGFNS, to ensure that a credentialing organization continues to follow the standards described in the proposed rule. The DHS proposed to review and reauthorize the credentialing organizations every 5 years. The rule also proposed that the DHS notify the credentialing organization in writing of the results of the review and reauthorization. If the DHS developed adverse information with respect to the performance of the organization, the DHS could institute termination proceedings. The DHS solicited comments from the public regarding the frequency of review, *e.g.*, review as part of the 5-year reauthorization, or an annual or bi-annual review, the nature of the review, and whether reviews, if conducted separately from reauthorization, should be targeted versus random, would be of great assistance in the development of a review process.

The DHS also proposed to assess whether an authorized credentialing organization had issued certificates or certified statements in a timely manner so as to minimize any delays that may affect an alien's ability to proceed with his or her application for an immigration benefit, and to assess whether the fee charged for a certificate or certified statement unduly impairs an alien's ability to seek an immigration benefit. The DHS sought comments on what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates or certified statements, and regarding what methodology the DHS should use in assessing whether a fee constitutes an obstacle to obtaining an immigration benefit.

In response to this proposal the DHS received eight comments. One commenter stated that the 5-year review period was appropriate while two commenters suggested that the DHS conduct bi-annual reviews of approved organizations. Two commenters suggested that the DHS conduct random surveys during the 5-year period.

Finally, CGFNS stated that it should be exempt from the 5-year review process because it is specifically listed in the statute as an organization authorized to issue certifications.

The DHS does not feel that it is appropriate to modify the proposed review process at this time by conducting additional scheduled reviews or by exempting any organizations. The DHS will adopt the suggestion to review an organization at any time during the 5-year period by reserving the right to conduct reviews of the approval of any request for authorization to issue certificates. The DHS retains the right to conduct a review at any time within the 5-year period of authorization. This authority under § 212.15(k)(8)(iii) provides that the DHS can request information of the organization and its program for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization. The DHS intends to use this authority to conduct periodic reviews. The DHS notes the concerns expressed by the commenters that organizations should be monitored on a bi-annual basis to ensure compliance with the approval standards but finds that a 5-year review period appears appropriate at this time. It should be noted that the DHS also has the ability to initiate termination proceedings any time after approval has been granted. The DHS can initiate termination proceedings at any time during the 5-year period based on information received from other sources, *e.g.*, adverse information provided by state licensing boards or uncovered during the course of an ordinary review of approval of an entity's authorization.

The DHS will not exempt CGFNS from the 5-year review process. While CGFNS is named in section 212(a)(5)(C) of the Act, it is named as one of the entities from which an alien may receive a valid certificate in order to gain admission. This language relates to the alien and his or her admissibility, not to CGFNS' authority to issue certificates, which is still subject to approval by the Bureau of Citizenship and Immigration Services. Just as this language does not preclude approval of other certifying organizations, it is the position of the Bureau of Citizenship and Immigration Services that it does not guarantee approval in the case of CGFNS either. Finally, Congress named CGFNS as an example in the statute because it was aware that this entity existed and was active in this field, but did not mean to confer any authority on CGFNS. Thus, CGFNS is not exempt from governmental oversight. The approval and review process is a guarantee that CGFNS will continue to meet the standards required for all certifying organizations.

The DHS also received two comments relating to the fees that an organization charges for the certification. One commenter stated that the CGFNS fee was too high while the other commenter proposed a rolling fee based on an alien's monthly income in his or her country.

The DHS will not modify the proposed rule to address the fee issue. The statute does not give the DHS the authority to set fees for organizations approved to issue certifications or certified statements. The DHS is confident that organizations authorized to issue certifications and statements will charge a reasonable fee that covers the cost of their respective processes.

Only one comment was received regarding what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates. The commenter suggested that 60 days would be an appropriate time period.

The DHS has decided to accommodate this concern. As the comment notes, this rule provides at 8 CFR 212.15(k)(4)(x) that certificates must be provided to applicants in a timely manner. The BCIS shares the commenter's concern that the certification requirement may unduly delay the recruitment of foreign health care workers and adversely affect health care in the United States. The BCIS notes that in such a case, it retains authority to commence termination proceedings against a certifying organization if the situation warrants. The BCIS may also provide other remedies, such as a waiver under section 212(d)(3) of the Act of the certification requirement in individual cases upon request. Such a waiver will only facilitate a determination of admissibility in the context of an application for admission, change of status, and/or extension of stay, however, and the alien must continue the process of obtaining the certificate as described in 8 CFR 212.15(n)(2)(i). The BCIS intends to monitor this situation and welcomes input from the public on the performance of certifying organizations.

Finally, it should be noted that the proposed criteria for awarding and governing certificate holders had the unintended effect of requiring an alien to submit evidence of passage of the profession's licensing or certification examination when in fact the statute permits an alien to demonstrate that he or she has passed the profession's licensing or certification examination or a test predicting the success on such an examination, if a majority of states licensing the profession recognize such a predictor test. After consultation with HHS, the DHS has amended language at 8 CFR 212.15(k)(7)(i) to clarify that health care workers have the option to demonstrate passage of an acceptable predictor test for purposes of obtaining health care worker certification.

Process for Terminating an Organization's Authorization To Issue Certifications

The proposed rule provided that, upon notification that an authorized credentialing organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted, of a violation of state or federal laws, so that the fitness of the organization to continue to issue certificates is called into question, the DHS shall automatically terminate authorization to issue certificates via notice to the credentialing organization.

Upon receipt or discovery of information that the credentialing organization is no longer complying with the standards contained in 8 CFR 212.15(k), or upon receipt or discovery of information that termination of the organization's approval is otherwise warranted, the DHS will issue a Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to the credentialing organization. The credentialing organization will be given 30 days from the date of the Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to rebut or cure the allegations made in the DHS' notice.

DHS will submit any information received in response to the Notice to HHS upon receipt. Thirty days after the date of the Notice of Intent to Terminate, the DHS will request an opinion from HHS regarding whether the organization's authorization should be terminated and forward any additional evidence. The DHS shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the organization's response, if any, to the Notice of Intent to Terminate, and of HHS' opinion, the DHS will provide the organization with a written decision.

The DHS's decision terminating an organization's authorization may be appealed to the AAO pursuant to 8 CFR 103.3. Termination of credentialing

status will occur on the date of the decision and remain in effect until and unless the terminated organization reapplies, with fee, for credentialing status and is approved, or its appeal of the termination decision is sustained by the AAO. There is no waiting period for an organization to re-apply for credentialing status.

The DHS received six comments in response to the DHS's proposal on the termination of an organization's authorization to issue certifications. One commenter stated that the two grounds for termination of an organization's approval were sufficient and that no further grounds should be added to the regulation. One commenter suggested that an organization's authorization should be terminated only if the organization has failed to comply with a material term of its authorization. A technical violation should not be grounds for termination. One commenter suggested that HHS should have 30 days to respond to the DHS's Notice of Intent to Terminate. One commenter suggested that the term ''or other adverse information'' contained in the proposed rule at 8 CFR 215.15(m)(2) is too vague. Finally, CGFNS stated that it should be permitted to issue certifications while the appeal of the termination decision is pending at the AAO.

The DHS will not modify the language contained in the proposed rule relating to the termination process. While certain portions of the regulatory language may be vague, the regulatory language is sufficiently clear to provide the required protection to the public. Further, the term ''or other adverse information'' provides the DHS with a vehicle to institute termination proceedings based on situations that arise that cannot be predicted at this time. Further, the DHS will not require HHS to respond to the DHS's termination notice within any specific time period because some issues are far too complex to be decided in arbitrarily established timeframes. Finally, although CGFNS has been specifically identified in the statute as an organization authorized to issue certifications, there is nothing in the statutory language that requires the DHS to establish a separate process to determine whether their authorization to issue certifications should be terminated for any of the reasons described in this rule.

This rule also clarifies that the immediate termination provisions of 8 CFR 212(n)(1) may be triggered upon receipt of any information calling into question the entity's fitness to issue certificates. For example, national security concerns, or issues relating to fraud, may not lead to prosecution but certainly relate to the fitness of the organization to issue certificates. This clarification has been made necessary by events and issues identified during the course of the DHS' administration of this program since the proposed rule. The lack of a criminal prosecution or conviction in cases involving national security does not reduce the need to act appropriately to protect the public in such cases.

Revocation of Certificates

The proposed rule provided that a credentialing organization must develop policies and procedures for the revocation of certificates at any time if it finds that the certificate holder was not eligible to receive the certificate at the time it was issued. These policies and procedures include notification to the DHS, via the Nebraska Service Center, that a certificate has been revoked. The DHS may then take any appropriate action against the individual alien, including revocation of the petition, and initiation of removal proceedings under section 240 of the Act.

Three commenters responded to this provision. One commenter suggested that an alien's certification should be revoked if the alien does not obtain a license to practice within 1 year of the issuance of the certification. Another commenter suggested that the certification should be revoked if the alien's ability to practice in the occupation is restricted.

The DHS will not adopt the first suggestion. Certifications must be used within 5 years of their issuance. The DHS can envision a number of situations where the alien may be unable to obtain licensure within 1 year of issuance of the certification. In fact, in the case of EB petitions, there is no regulatory or statutory requirement that the alien ever obtain a license. Further, sections 212(a)(5)(C) and 212(r) of the Act are merely grounds of inadmissibility to the United States and therefore address an alien's ability to enter the United States and immediately begin the intended employment. They were not designed to regulate the practice of health care or the continuing qualifications of health care workers within the United States.

However, the DHS is concerned about events that may occur subsequent to an alien's certification and the effect those events may have upon an alien's admissibility to and status in the United States. This final rule therefore adopts the second commenter's suggestion and provides that an organization issuing certificates must include in its revocation process a mechanism to revoke a certificate when it learns that a holder is no longer eligible to hold a certificate.

The third commenter suggested that an alien that is issued a certification should be required to report employment information to the credentialing organization which will then be reported to the DHS. This comment will not be adopted because the role of credentialing organizations is to review a health care worker's qualifications, including education, training, license, and experience. The role of credentialing organizations does not include making a determination that an employment offer is valid and that the alien is continuing to work for the employer.

Form of the Health Care Worker Certification or Foreign Nurse Certified Statement

The proposed rule at 8 CFR 212.15(f) described the content of the certificate. The proposed rule at 8 CFR 212.15(h) described the content of the certified statement. The proposed rule provided that the certification should contain the following information:

(1) The name, designated point of contact to verify the validity of the certificate, address, and telephone number of the certifying organization;

(2) The date the certificate was issued;

(3) The health care occupation for which the certificate was issued; and

(4) The alien's name, and date and place of birth.

The proposed rule also provided that the certificate or certified statement does not constitute professional authorization to practice in that health care occupation.

The DHS received one comment regarding the information that should be included on the certification. The commenter suggested that each certification should contain the regulatory language indicating that the certification did not grant the holder authority to work in a health care occupation.

The DHS will not adopt this suggestion because it is unnecessary. A health care worker certificate or certified statement is evidence of an alien's admissibility under section 212(a) of the Act and not an employment authorization document. Acceptable employment authorization documents are enumerated under 8 CFR 274a. An alien who has made an application for a certification will be aware of the difference between the immigration requirements for entry in order to work in a covered health care

occupation and the various state licensure requirements required to practice his or her occupation in the United States. In addition, the DHS has limited the information required on the certification to generally address the identity of the certificate holder and his or her admissibility under section 212(a)(5)(C) or 212(r) of the Act, rather than the certificate holder's authority to practice in the health care occupation.

Another commenter stated that an organization should not issue a certification until such time as the alien obtains a United States license to practice in his or her occupation. This comment will not be adopted because some aliens, *e.g.*, EB immigrants and certain nonimmigrants subject to this rule, such as aliens with extraordinary ability (O–1) and exchange visitors (J–1), are not required to satisfy state licensure requirements for classification.

One commenter noted that the proposed rule did not contain a description of what an approved organization was required to verify before it issued a certification. The commenter noted that the DHS had previously required approved organizations to examine the alien's education, training, and license prior to issuing a certification. This information was unintentionally omitted from the proposed rule. The DHS will amend 8 CFR 215.15(f) to include this information.

English Language Scores for Certification

As stated in the proposed rule, HHS, in consultation with DoED, is required to establish a level of competence in oral and written English appropriate for the health care field in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write. The statute vests the Secretary of HHS with the ''sole discretion'' to determine the standardized tests and appropriate minimum scores. In developing the English language test scores, HHS consulted with DoED and appropriate health care professional organizations. HHS also examined a study sponsored in part by NBCOT entitled ''Standards for Examinations Assessing English as a Second Language.'' The scores reflect the current industry requirements for particular health care occupations.

One commenter suggested that the DHS adopt separate scores and a specific test for the occupation of physician assistant. This comment will not be adopted in this rule because HHS has not designated a separate test and score for the occupation.

One commenter noted that the DHS had failed to specify which modules of the International English Language Testing System (IELTS) would be required for the covered occupations. This information was unintentionally omitted from the proposed rule. The DHS will amend 8 CFR 215.15(g)(4) to clarify when an Academic and/or General Module will be required for a covered health care occupation.

The HHS had initially identified four testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The four testing services were the Educational Testing Service (ETS), the Michigan English Language Assessment Battery (MELAB), the Test of English in International Communication (TOEIC) Service International, and the IELTS. The proposed regulation at 8 CFR 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

The DHS received 29 comments in response to the English language testing proposals. Eight commenters agreed that the IELTS and TOEIC tests should be included in the final rule. Six commenters expressed dissatisfaction with the test of spoken English (TSE) given by ETS, asserting that it was too difficult to pass and that it prevented health care facilities from recruiting qualified workers. One commenter even suggested that the test intentionally discriminated against certain nationalities.

The English test offered by ETS has been used by colleges, universities, and accrediting organizations for years to test English language skills. Both HHS and the DoED have reviewed this test prior to its inclusion in the previously published interim rules and the proposed rule. The DHS is not persuaded that the test is not a valid test of English language skills and, as a result, the option of TSE will remain in this final rule.

The DHS also proposed that, as an alternative to listing the tests and appropriate scores by Interim Rule, the DHS would designate, by a separate and comprehensive public notice in the **Federal Register**, the list of tests and appropriate scores. The DHS would maintain this list on its Web site. This method would allow the DHS to update the list of tests and scores more quickly than through publication of interim rules. The DHS will continue to coordinate with the HHS and the DoED to make the designation of tests and appropriate scores needed to satisfy the English proficiency requirement.

The DHS received four comments on this proposal. Three commenters suggested that the DHS adopt the alternative method of advising the public of the approved English tests by a notice in the **Federal Register** while one commenter suggested that the use of an interim rule would be more appropriate.

After consideration of the comments, the DHS will adopt the alternative method discussed in the proposed rule. In view of the extensive governmental review before a test is approved, it is not likely that the comments received in response to an interim rule would be beneficial. As a result, this final rule at 8 CFR 215.15(g)(4)(iv) provides that the DHS will notify the public of new approved English testing services by publishing a notice in the **Federal Register**. The DHS will also maintain the list of approved English tests and the appropriate scores on its Web site at *http://www.immigration.gov.*

One commenter noted that the current availability of English tests did not meet the demand creating significant delays for health care workers. To solve this problem, other testing services are encouraged to submit information concerning their testing services to the DHS, for HHS and DoED review, and credentialing organizations are encouraged to develop a test specifically designed to measure English language skills and to seek HHS approval of the test. As noted in the proposed rule, HHS has advised the DHS that graduates of health profession programs in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are deemed to have met the English language requirements. HHS has determined that aliens who have graduated from these programs have the requisite competency in oral and written English. The level of English that the graduates of these health profession programs would need in order to graduate is deemed equivalent to the level that would be demonstrated by achieving the minimum passing score on the tests previously described. Nurses who are eligible to present an alternate certified statement under section 212(r) of the Act by definition have satisfied the English language requirements.

Six commenters suggested that additional countries be added to the list of countries that should be exempt from the English language requirements. The list of countries has been furnished to HHS for their review for possible inclusion in the list of exempt countries.

One commenter suggested that the English language test be separate and apart from the credentialing portion of the certification process. This suggestion cannot be adopted because it is contrary to the statute.

Finally, after publication of the proposed rule, the DHS was notified that the MELAB no longer wishes to be designated as an approved English test for the purpose of issuing health care certifications. Therefore, MELAB has been removed from the list of approved English tests and is not included in this final rule. As a result, individuals who seek to meet the English language requirements will be required to do one of the following:

(1) Take the three tests offered by ETS;

(2) Take the TOEIC offered by TOEIC Service International, in addition to the test of spoken English and the test of written English offered by ETS; or

(3) Take the IELTS examination.

Additional Comments Regarding the Proposed Rule

Two commenters noted that the proposed rule did not contain a requirement that an organization was to verify that an alien either passed a predictor examination or the state licensing examination for his or her occupation. One of the commenters noted that the DHS had previously listed this requirement in the previously published interim rules.

The DHS has unintentionally failed to provide a description of what an organization is required to verify before it can issue a certification under section 212(a)(5)(C) of the Act. This information is now listed at 8 CFR 215.15(f).

Three commenters stated that nurses should not be required to take the predictor examination if they have passed the NCLEX–RN state licensing examination. The statute at sections 212(a)(5)(C) and 212(r) of the Act requires that a certifying entity verify that an alien has passed either the profession's licensing or certification examination, or a predictor test if a majority of states licensing the profession in which the alien intends to work recognize such a predictor test. The DHS has added language at 8 CFR 212.15(f)(1)(iv) to clarify that a nurse who is obtaining a certificate under section 212(a)(5)(C) of the Act must demonstrate that they have passed the profession's licensing examination (NCLEX–RN) or the predictor test.

One commenter stated that some nurses are not eligible to obtain a certified statement as described in section 212(r) of the Act. Section 212(r) of the Act was created as an alternative to the certification process of section 212(a)(5)(C) of the Act. It was specifically designed to accommodate a limited number of nurses who met certain criteria and not all nonimmigrant nurses.

Finally, CGFNS stated that the language in the proposed rule appeared to preclude them from obtaining authorization to issue certifications to audiologists. The DHS has corrected this oversight by amending the language at 8 CFR 215.15(j)(2) to include audiologists among the covered occupations.

Regulatory Flexibility Act

I have reviewed this regulation, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, I have determined that this rule will not have a significant economic impact on a substantial number of small entities. It is projected that there will be, at most, 21 small businesses that apply to the Department of Homeland Security to issue certificates for health care workers. Although these small entities are required to pay a fee when submitting their applications, these small entities may recoup this expense if they charge aliens who must obtain a foreign health care worker certificate.

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 or more in any 1 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

This rule is considered by the Department of Homeland Security to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to OMB for review. The Department of Homeland Security has assessed both the costs and the benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this rule justify its costs. Briefly, that assessment is as follows:

The Department of Homeland Security has determined that any entity seeking authorization to issue health care worker certifications must apply for authorization on Form I–905. The Department of Homeland Security determined that $230 was the appropriate fee for Form I–905 after comparing the processing of the form to the process involved with Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, which has a processing fee of $230. The Department of Homeland Security has estimated that there will be approximately 10 applicants who will each have a time burden of approximately 4 hours, and who will be required to pay a total of $2,300. Once the Form I–905 is approved, an authorized entity will be authorized to issue health care worker certification for a period of 5 years, and will be able to recoup the costs of the Form I–905 by charging a fee for each certificate that it issues.

Each credentialing organization may set its own fee to recover the costs of issuing of a health care worker certificate, although the price may vary between organizations. The CGFNS is the organization that is currently authorized to issue certifications to the largest number of applicants because it is authorized to issue certifications to all seven occupations. The Department of Homeland Security has estimated that the total time burden associated with each certification is approximately 220 minutes. The current price for a CGFNS certificate or certified statement is approximately $325, which is charged to an individual alien. In some cases, a petitioning employer may choose to pay on behalf of the alien. Finally, the Department of Homeland Security has determined that the benefit to the United States public of the statute requiring the issuance of certificates will be to ensure that all health care workers covered by the regulations, including all nonimmigrants, have met the same minimum requirements with regard to an evaluation of their credentials, licensing, training and English language ability before commencing employment in their respective occupations. Even in cases where all states require a foreign health

care worker to be licensed to practice within the United States, as in the case of nurses, the underlying requirements for licensure differ from state to state. This rule will ensure that uniformly qualified foreign health care professionals enter the United States workforce and that foreign health care workers and the Department of Homeland Security are in compliance with the statutory requirements of section 212(a)(5)(C) of the Act.

Executive Order 13132

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

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

The information collection requirement contained in this rule (Form I–905) (OMB Control Number 1115–0238) has been approved for use by OMB under the Paperwork Reduction Act. The information required on the health care certificate or certified statement (OMB Control Number 1115–0226) has been revised to reflect that a certificate must demonstrate that an alien has met the requirements of section 212(a)(5)(C) of the Act. This revision was submitted to OMB for review in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government Agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103 B—POWERS AND DUTIES OF SERVICE OFFICER; AVAILABILITY OF SERVICE RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

■ 2. Section 103.7(b)(1) is amended by adding a new entry for the Form ''I–905'' to the list of fees in alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(l) * * *

* * * * *

Form I–905, Application for authorization to issue certification for health care workers—$230.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

■ 4. Section 212.15 is revised to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) *General certification requirements.* (1) Except as provided in paragraph (b) or paragraph (d)(1) of this section, any alien who seeks admission to the United States as an immigrant or as a nonimmigrant for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a certificate from a credentialing organization, listed in paragraph (e) of this section.

(2) In the alternative, an eligible alien who seeks to enter the United States for the primary purpose of performing labor as a nurse may present a certified statement as provided in paragraph (h) of this section.

(3) A certificate or certified statement described in this section does not constitute professional authorization to practice in that health care occupation.

(b) *Inapplicability of the ground of inadmissibility.* This section does not apply to:

(1) Physicians;

(2) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical care occupation is one in which the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, and managers of health care facilities;

(3) Aliens coming to the United States to receive training as an H–3 nonimmigrant, or receiving training as part of an F or J nonimmigrant program.

(4) The spouse and dependent children of any immigrant or nonimmigrant alien;

(5) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than under section 245 of the Act, or any alien who is seeking adjustment of status under section 245 of the Act on the basis of a relative visa petition approved under section 203(a) of the Act, or any alien seeking adjustment of status under section 245 of the Act on the basis of an employment-based petition approved pursuant to section 203(b) of the Act for employment that does not fall under one of the covered health care occupations listed in paragraph (c) of this section.

(c) *Covered health care occupations.* With the exception of the aliens described in paragraph (b) of this section, this paragraph (c) applies to any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Occupational Therapists.

(3) Physical Therapists.

(4) Speech Language Pathologists and Audiologists.

(5) Medical Technologists (Clinical Laboratory Scientists).

(6) Physician Assistants.

(7) Medical Technicians (Clinical Laboratory Technicians)

(d) *Presentation of certificate or certified statements.* (1) *Aliens required to obtain visas.* Except as provided in paragraph (n) of this section, if 8 CFR 212.1 requires an alien who is described in paragraph (a) of this section and who is applying for admission as a nonimmigrant seeking to perform labor in a health care occupation as described in this section to obtain a nonimmigrant visa, the alien must present a certificate or certified statement to a consular officer at the time of visa issuance and to the Department of Homeland Security (DHS) at the time of admission. The certificate or certified statement must be valid at the time of visa issuance and admission at a port-of-entry. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will be required to present it again at the time of visa issuance or each admission to the United States.

(2) *Aliens not requiring a nonimmigrant visa.* Except as provided in paragraph (n) of this section, an alien described in paragraph (a) of this section who, pursuant to 8 CFR 212.1, is not required to obtain a nonimmigrant visa to apply for admission to the United States must present a certificate or certified statement as provided in this section to an immigration officer at the time of initial application for admission to the United States to perform labor in a particular health care occupation. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will be required to present it again at the time of each application for admission.

(e) *Approved credentialing organizations for health care workers.* An alien may present a certificate from any credentialing organization listed in this paragraph (e) with respect to a particular health care field. In addition to paragraphs (e)(1) through (e)(3) of this section, the DHS will notify the public of additional credentialing organizations through the publication of notices in the **Federal Register**.

(1) The Commission on Graduates of Foreign Nursing Schools (CGFNS) is authorized to issue certificates under section 212(a)(5)(C) of the Act for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.

(2) The National Board for Certification in Occupational Therapy (NBCOT) is authorized to issue certificates in the field of occupational therapy pending final adjudication of its credentialing status under this part.

(3) The Foreign Credentialing Commission on Physical Therapy (FCCPT) is authorized to issue certificates in the field of physical therapy pending final adjudication of its credentialing status under this part.

(f) *Requirements for issuance of health care certification.* (1) Prior to issuing a certification to an alien, the organization must verify the following:

(i) That the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(ii) That the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(iii) That the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States. This verification is not binding on the DHS; and

(iv) Either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of states licensing the occupation for which the certification is issued, or that the alien has passed the occupation's licensing or certification examination.

(2) A certificate issued under section 212(a)(5)(C) of the Act must contain the following:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate;

(ii) The date the certificate was issued;

(iii) The health care occupation for which the certificate was issued; and

(iv) The alien's name, and date and place of birth.

(g) *English language requirements.* (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of HHS has sole authority to set standards for these English language requirements, and has determined that an alien must have a passing score on one of the three tests listed in paragraph (g)(3) of this section before he or she can be granted a certificate. HHS will notify The Department of Homeland Security of additions or deletions to this list, and The Department of Homeland Security will publish such changes in the **Federal Register**.

(2) The following aliens are exempt from the English language requirements:

(i) Alien nurses who are presenting a certified statement under section 212(r) of the Act; and

(ii) Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, or the United States.

(3) The following English testing services have been approved by the Secretary of HHS:

(i) Educational Testing Service (ETS).

(ii) Test of English in International Communication (TOEIC) Service International.

(iii) International English Language Testing System (IELTS).

(4) Passing English test scores for various occupations.

(i) *Occupational and physical therapists.* An alien seeking to perform labor in the United States as an occupational or physical therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL): Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. The certifying organizations shall not accept the results of the TOEIC, or the IELTS for the occupation of occupational therapy or physical therapy.

(ii) *Registered nurses and other health care workers requiring the attainment of a baccalaureate degree.* An alien coming to the United States to perform labor as a registered nurse (other than a nurse presenting a certified statement under section 212(r) of the Act) or to perform labor in another health care occupation requiring a baccalaureate degree (other than occupational or physical therapy) must obtain one of the following combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50;

(B) TOEIC Service International: TOEIC: 725; plus TWE: 4.0 and TSE: 50; or

(C) IELTS: 6.5 overall with a spoken band score of 7.0. This would require the Academic module.

(iii) *Occupations requiring less than a baccalaureate degree.* An alien coming to the United States to perform labor in a health care occupation that does not require a baccalaureate degree must obtain one of the following combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50;

(B) TOEIC Service International: TOEIC: 700; plus TWE 4.0 and TSE: 50; or

(C) IELTS: 6.0 overall with a spoken band score of 7.0. This would allow either the Academic or the General module.

(h) *Alternative certified statement for certain nurses.* (1) CGFNS is authorized to issue certified statements under section 212(r) of the Act for aliens seeking to enter the United States to perform labor as nurses. The DHS will notify the public of new organizations that are approved to issue certified statements through notices published in the **Federal Register**.

(2) An approved credentialing organization may issue a certified statement to an alien if each of the following requirements is satisfied:

(i) The alien has a valid and unrestricted license as a nurse in a state where the alien intends to be employed and such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(ii) The alien has passed the National Council Licensure Examination for registered nurses (NCLEX–RN);

(iii) The alien is a graduate of a nursing program in which the language of instruction was English;

(iv) The nursing program was located in Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom, or the United States; or in any other country designated by unanimous agreement of CGFNS and any equivalent credentialing organizations which have been approved for the certification of nurses and which are listed at paragraph (e) of this section; and

(v) The nursing program was in operation on or before November 12, 1999, or has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations that have been approved for the certification of nurses.

(3) An individual who obtains a certified statement need not comply with the certificate requirements of paragraph (f) or the English language requirements of paragraph (g) of this section.

(4) A certified statement issued to a nurse under section 212(r) of the Act must contain the following information:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certified statement;

(ii) The date the certified statement was issued; and

(iii) The alien's name, and date and place of birth.

(i) *Streamlined certification process.* (1) *Nurses.* An alien nurse who has graduated from an entry level program accredited by the National League for Nursing Accreditation Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE) is exempt from the educational comparability review and English language proficiency testing.

(2) *Occupational Therapists.* An alien occupational therapist who has graduated from a program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA) is exempt from the educational comparability review and English language proficiency testing.

(3) *Physical therapists.* An alien physical therapist who has graduated from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA) is exempt from the educational comparability review and English language proficiency testing.

(4) *Speech language pathologists and audiologists.* An alien speech language pathologists and/or audiologist who has graduated from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA) is exempt from the educational comparability review and English language proficiency testing.

(j) *Application process for credentialing organizations.* (1) *Organizations other than CGFNS.* An organization, other than CGFNS, seeking to obtain approval to issue certificates to health care workers, or certified statements to nurses shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers, and all accompanying required evidence, to the Director, Nebraska Service Center, in duplicate with the appropriate fee contained in 8 CFR 103.7(b)(1). An organization seeking authorization to issue certificates or certified statements must agree to submit all evidence required by the DHS and, upon request, allow the DHS to review the organization's records related to the certification process. As required on Form I–905, the application must:

(i) Clearly describe and identify the organization seeking authorization to issue certificates;

(ii) List the occupations for which the organization desires to provide certificates;

(iii) Describe how the organization substantially meets the standards described at paragraph (k) of this section;

(iv) Describe the organization's expertise, knowledge, and experience in the health care occupation(s) for which it desires to issue certificates;

(v) Provide a point of contact;

(vi) Describe the verification procedure the organization has designed in order for the DHS to verify the validity of a certificate; and

(vii) Describe how the organization will process and issue in a timely manner the certificates.

(2) *Applications filed by CGFNS.* (i) CGFNS shall submit Form I–905 to the Director, Nebraska Service Center, to ensure that it will be in compliance with the regulations governing the issuance and content of certificates to nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants under section 212(a)(5)(C) of the Act, or issuing certified statements to nurses under section 212(r) of the Act.

(ii) Prior to issuing certificates for any other health care occupations, CGFNS shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers, to the Director, Nebraska Service Center with the appropriate fee contained in 8 CFR 103.7(b)(1) for authorization to issue such certificates. The DHS will evaluate CGFNS' expertise with respect to the particular health care occupation for which authorization to issue certificates is sought, in light of CGFNS' statutory designation as a credentialing organization.

(3) *Procedure for review of applications by credentialing organizations.* (i) After receipt of Form I–905, the Director, Nebraska Service Center shall, in all cases, forward a copy of the application and supporting documents to the Secretary of HHS in order to obtain an opinion on the merits of the application. The DHS will not render a decision on the request until the Secretary of HHS provides an opinion. The DHS shall accord the Secretary of HHS' opinion great weight in reaching its decision. The DHS may deny the organization's request notwithstanding the favorable recommendation from the Secretary of HHS, on grounds unrelated to the

credentialing of health care occupations or health care services.

(ii) The DHS will notify the organization of the decision on its application in writing and, if the request is denied, of the reasons for the denial. Approval of authorization to issue certificates to foreign health care workers or certified statements to nurses will be made in 5-year increments, subject to the review process described at paragraph (l) of this section.

(iii) If the application is denied, the decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations.

(k) *Standards for credentialing organizations.* The DHS will evaluate organizations, including CGFNS, seeking to obtain approval from the DHS to issue certificates for health care workers, or certified statements for nurses. Any organization meeting the standards set forth in paragraph (k)(1) of this section can be eligible for authorization to issue certificates. While CGFNS has been specifically listed in the statute as an entity authorized to issue certificates, it is not exempt from governmental oversight. All organizations will be reviewed, including CGFNS, to guarantee that they continue to meet the standards required of all certifying organizations, under the following:

(1) *Structure of the organization.* (i) The organization shall be incorporated as a legal entity.

(ii)(A) The organization shall be independent of any organization that functions as a representative of the occupation or profession in question or serves as or is related to a recruitment/placement organization.

(B) The DHS shall not approve an organization that is unable to render impartial advice regarding an individual's qualifications regarding training, experience, and licensure.

(C) The organization must also be independent in all decision making matters pertaining to evaluations and/or examinations that it develops including, but not limited to: policies and procedures; eligibility requirements and application processing; standards for granting certificates and their renewal; examination content, development, and administration; examination cut-off scores, excluding those pertaining to English language requirements; grievance and disciplinary processes; governing body and committee meeting rules; publications about qualifying for a certificate and its renewal; setting fees for application and all other services provided as part of the screening process; funding, spending, and budget authority related to the operation of the certification organization; ability to enter into contracts and grant arrangements; ability to demonstrate adequate staffing and management resources to conduct the program(s) including the authority to approve selection of, evaluate, and initiate dismissal of the chief staff member.

(D) An organization whose fees are based on whether an applicant receives a visa may not be approved.

(iii) The organization shall include the following representation in the portion of its organization responsible for overseeing certification and, where applicable, examinations:

(A) Individuals from the same health care discipline as the alien health care worker being evaluated who are eligible to practice in the United States; and

(B) At least one voting public member to represent the interests of consumers and protect the interests of the public at large. The public member shall not be a member of the discipline or derive significant income from the discipline, its related organizations, or the organization issuing the certificate.

(iv) The organization must have a balanced representation such that the individuals from the same health care discipline, the voting public members, and any other appointed individuals have an equal say in matters relating to credentialing and/or examinations.

(v) The organization must select representatives of the discipline using one of the following recommended methods, or demonstrate that it has a selection process that meets the intent of these methods:

(A) Be selected directly by members of the discipline eligible to practice in the United States;

(B) Be selected by members of a membership organization representing the discipline or by duly elected representatives of a membership organization; or

(C) Be selected by a membership organization representing the discipline from a list of acceptable candidates supplied by the credentialing body.

(vi) The organization shall use formal procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors. Not-for-profit corporations which have difficulty meeting this requirement may provide in their applications evidence that the organization is independent, and free of material conflicts of interest regarding whether an alien receives a visa.

(vii) The organization shall be separate from the accreditation and educational functions of the discipline, except for those entities recognized by the Department of Education as having satisfied the requirement of independence.

(viii) The organization shall publish and make available a document which clearly defines the responsibilities of the organization and outlines any other activities, arrangements, or agreements of the organization that are not directly related to the certification of health care workers.

(2) *Resources of the organization.* (i) The organization shall demonstrate that its staff possess the knowledge and skills necessary to accurately assess the education, work experience, licensure of health care workers, and the equivalence of foreign educational institutions, comparable to those of United States-trained health care workers and institutions.

(ii) The organization shall demonstrate the availability of financial and material resources to effectively and thoroughly conduct regular and ongoing evaluations on an international basis.

(iii) If the health care field is one for which a majority of the states require a predictor test, the organization shall demonstrate the ability to conduct examinations in those countries with educational and evaluation systems comparable to the majority of states.

(iv) The organization shall have the resources to publish and make available general descriptive materials on the procedures used to evaluate and validate credentials, including eligibility requirements, determination procedures, examination schedules, locations, fees, reporting of results, and disciplinary and grievance procedures.

(3) *Candidate evaluation and testing mechanisms.* (i) The organization shall publish and make available a comprehensive outline of the information, knowledge, or functions covered by the evaluation/examination process, including information regarding testing for English language competency.

(ii) The organization shall use reliable evaluation/examination mechanisms to evaluate individual credentials and competence that is objective, fair to all candidates, job related, and based on knowledge and skills needed in the discipline.

(iii) The organization shall conduct ongoing studies to substantiate the reliability and validity of the evaluation/examination mechanisms.

(iv) The organization shall implement a formal policy of periodic review of the evaluation/examination mechanism to ensure ongoing relevance of the mechanism with respect to knowledge and skills needed in the discipline.

(v) The organization shall use policies and procedures to ensure that all

aspects of the evaluation/examination procedures, as well as the development and administration of any tests, are secure.

(vi) The organization shall institute procedures to protect against falsification of documents and misrepresentation, including a policy to request each applicant's transcript(s) and degree(s) directly from the educational licensing authorities.

(vii) The organization shall establish policies and procedures that govern the length of time the applicant's records must be kept in their original format.

(viii) The organization shall publish and make available, at least annually, a summary of all screening activities for each discipline including, at least, the number of applications received, the number of applicants evaluated, the number receiving certificates, the number who failed, and the number receiving renewals.

(4) *Responsibilities to applicants applying for an initial certificate or renewal.* (i) The organization shall not discriminate among applicants as to age, sex, race, religion, national origin, disability, or marital status and shall include a statement of nondiscrimination in announcements of the evaluation/examination procedures and renewal certification process.

(ii) The organization shall provide all applicants with copies of formalized application procedures for evaluation/examination and shall uniformly follow and enforce such procedures for all applicants. Instructions shall include standards regarding English language requirements.

(iii) The organization shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.

(iv) Where examinations are used, the organization shall provide competently proctored examination sites at least once annually.

(v) The organization shall report examination results to applicants in a uniform and timely fashion.

(vi) The organization shall provide applicants who failed either the evaluation or examination with information on general areas of deficiency.

(vii) The organization shall implement policies and procedures to ensure that each applicant's examination results are held confidential and delineate the circumstances under which the applicant's certification status may be made public.

(viii) The organization shall have a formal policy for renewing the certification if an individual's original certification has expired before the individual first seeks admission to the United States or applies for adjustment of status. Such procedures shall be restricted to updating information on licensure to determine the existence of any adverse actions and the need to re-establish English competency.

(ix) The organization shall publish due process policies and procedures for applicants to question eligibility determinations, examination or evaluation results, and eligibility status.

(x) The organization shall provide all qualified applicants with a certificate in a timely manner.

(5) *Maintenance of comprehensive and current information.* (i) The organization shall maintain comprehensive and current information of the type necessary to evaluate foreign educational institutions and accrediting bodies for purposes of ensuring that the quality of foreign educational programs is equivalent to those training the same occupation in the United States. The organization shall examine, evaluate, and validate the academic and clinical requirements applied to each country's accrediting body or bodies, or in countries not having such bodies, of the educational institution itself.

(ii) The organization shall also evaluate the licensing and credentialing system(s) of each country or licensing jurisdiction to determine which systems are equivalent to that of the majority of the licensing jurisdictions in the United States.

(6) *Ability to conduct examinations fairly and impartially.* An organization undertaking the administration of a predictor examination, or a licensing or certification examination shall demonstrate the ability to conduct such examination fairly and impartially.

(7) *Criteria for awarding and governing certificate holders.* (i) The organization shall issue a certificate after the education, experience, license, and English language competency have been evaluated and determined to be equivalent to their United States counterparts. In situations where a United States nationally recognized licensure or certification examination, or a test predicting the success on the licensure or certification examination, is offered overseas, the applicant must pass the examination or the predictor test prior to receiving certification. Passage of a test predicting the success on the licensure or certification examination may be accepted only if a majority of states (and Washington, DC) licensing the profession in which the alien intends to work recognize such a test.

(ii) The organization shall have policies and procedures for the revocation of certificates at any time if it is determined that the certificate holder was not eligible to receive the certificate at the time that it was issued. If the organization revokes an individual's certificate, it must notify the DHS, via the Nebraska Service Center, and the appropriate state regulatory authority with jurisdiction over the individual's health care profession. The organization may not reissue a certificate to an individual whose certificate has been revoked.

(8) *Criteria for maintaining accreditation.* (i) The organization shall advise the DHS of any changes in purpose, structure, or activities of the organization or its program(s).

(ii) The organization shall advise the DHS of any major changes in the evaluation of credentials and examination techniques, if any, or in the scope or objectives of such examinations.

(iii) The organization shall, upon the request of the DHS, submit to the DHS, or any organization designated by the DHS, information requested of the organization and its programs for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization.

(iv) The organization shall establish performance outcome measures that track the ability of the certificate holders to pass United States licensure or certification examinations. The purpose of the process is to ensure that certificate holders pass United States licensure or certification examinations at the same pass rate as graduates of United States programs. Failure to establish such measures, or having a record showing an inability of persons granted certificates to pass United States licensure examinations at the same rate as graduates of United States programs, may result in a ground for termination of approval. Information regarding the passage rates of certificate holders shall be maintained by the organization and provided to HHS on an annual basis, to the DHS as part of the 5-year reauthorization application, and at any other time upon request by HHS or the DHS.

(v) The organization shall be in ongoing compliance with other policies specified by the DHS.

(l) *DHS review of the performance of certifying organizations.* The DHS will review credentialing organizations every 5 years to ensure continued compliance with the standards described in this section. Such review will occur

concurrent with the adjudication of a Form I–905 requesting reauthorization to issue health care worker certificates. The DHS will notify the credentialing organization in writing of the results of the review and request for reauthorization. The DHS may conduct a review of the approval of any request for authorization to issue certificates at any time within the 5-year period of authorization for any reason. If at any time the DHS determines that an organization is not complying with the terms of its authorization or if other adverse information relating to eligibility to issue certificates is developed, the DHS may initiate termination proceedings.

(m) *Termination of certifying organizations.* (1) If the DHS determines that an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, or other information is developed such that the fitness of the organization to continue to issue certificates or certified statements is called into question, the DHS shall automatically terminate authorization for that organization to issue certificates or certified statements by issuing to the organization a notice of termination of authorization to issue certificates to foreign health care workers. The notice shall reference the specific conviction that is the basis of the automatic termination.

(2) If the DHS determines that an organization is not complying with the terms of its authorization or other adverse information relating to eligibility to issue certificates is uncovered during the course of a review or otherwise brought to the DHS' attention, or if the DHS determines that an organization currently authorized to issue certificates or certified statements has not submitted an application or provided all information required on Form I–905 within 6 months of July 25, 2003, the DHS will issue a Notice of Intent to Terminate authorization to issue certificates to the credentialing organization. The Notice shall set forth reasons for the proposed termination.

(i) The credentialing organization shall have 30 days from the date of the Notice of Intent to Terminate authorization to rebut the allegations, or to cure the noncompliance identified in the DHS's notice of intent to terminate.

(ii) DHS will forward to HHS upon receipt any information received in response to a Notice of Intent to Terminate an entity's authorization to issue certificates. Thirty days after the date of the Notice of Intent to Terminate, the DHS shall forward any additional evidence and shall request an opinion from HHS regarding whether the organization's authorization should be terminated. The DHS shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the rebuttal evidence, if any, and consideration of HHS' opinion, the DHS will promptly provide the organization with a written decision. If termination of credentialing status is made, the written decision shall set forth the reasons for the termination.

(3) An adverse decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations. Termination of credentialing status shall remain in effect until and unless the terminated organization reapplies for credentialing status and is approved, or its appeal of the termination decision is sustained by the Administrative Appeals Office. There is no waiting period for an organization to re-apply for credentialing status.

(n) *Transition.* (1) *One year waiver.* Under the discretion given to the Secretary, DHS, under section 212(d)(3) of the Act (and, for cases described in paragraph (d)(1) of this section, upon the recommendation of the Secretary of State), the Secretary has determined that until July 26, 2004 the DHS shall, subject to the conditions in paragraph (n)(2) of this section, exercise favorably the discretion given to the Secretary under section 212(d)(3) of the Act and may admit, extend the period of authorized stay, or change the nonimmigrant status of an alien described in paragraph (d)(1) or paragraph (d)(2) of this section to the United States temporarily, despite the alien's inadmissibility under section 212(a)(5)(C) of the Act and paragraph (a) of this section in any case, if the DHS admits the alien, or extends the alien's period of authorized stay, or changes the alien's status on or before July 26, 2004; and the alien is not inadmissible under any other provision of section 212(a) of the Act (or has obtained a waiver of that inadmissibility). On or after July 26, 2004, such discretion shall be applied on a case by case basis.

(2) *Conditions.* Until July 26, 2004, the temporary admission, extension of stay, or change of status of an alien described in paragraph (d)(1) or (d)(2) of this section that is provided for under this paragraph (n) is subject to the following conditions:

(i) The admission, extension of stay, or change of status may not be for a period longer than 1 year from the date of the decision, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;

(ii) The alien must obtain the certification required by paragraph (a) of this section within 1 year of the date of decision to admit the alien or to extend the alien's stay or change the alien's status; and,

(iii) Any subsequent petition or application to extend the period of the alien's authorized stay or change the alien's nonimmigrant status must include proof that the alien has obtained the certification required by paragraph (a) of this section, if the extension or stay or change of status is sought for the primary purpose of the alien's performing labor in a health care occupation listed in paragraph (c) of this section.

(3) *Immigrant aliens.* An alien described in paragraph (a) of this section, who is coming to the United States as an immigrant or is applying for adjustment of status pursuant to section 245 of the Act (8 U.S.C. 1255), to perform labor in a health care occupation described in paragraph (c) of this section, must submit the certificate or certified statement as provided in this section at the time of visa issuance or adjustment of status.

(4) *Expiration of certificate or certified statement.* The individual's certification or certified statement must be used for any admission into the United States, change of status within the United States, or adjustment of status within 5 years of the date that it is issued.

(5) *Revocation of certificate or certified statement.* When a credentialing organization notifies the DHS, via the Nebraska Service Center, that an individual's certification or certified statement has been revoked, the DHS will take appropriate action, including, but not limited to, revocation of approval of any related petitions, consistent with the Act and DHS regulations at 8 CFR 205.2, 8 CFR 214.2(h)(11)(iii), and 8 CFR 214.6(d)(5)(iii).

PART 214—NONIMMIGRANT CLASSES

■ 5. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–15 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009 B 708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

■ 6. Section 214.1 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(i) *Employment in a health care occupation.* Except as provided in 8 CFR 212.15(n), any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a heath care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Department of Homeland Security (DHS) in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

(j) Extension of stay or change of status for health care worker. In the case of any alien admitted temporarily as a nonimmigrant under section 212(d)(3) of the Act and 8 CFR 212.15(n) for the primary purpose of the providing labor in a health care occupation described in 8 CFR 212.15(c), a petition to extend the period of the alien's authorized stay or to change the alien's status shall be denied if:

(1) The petitioner or applicant fails to submit the certification required by 8 CFR 212.15(a) with the petition or application to extend the alien's stay or change the alien's status; or

(2) The petition or application to extend the alien's stay or change the alien's status does include the certification required by 8 CFR 212.15(a), but the alien obtained the certification more than 1 year after the date of the alien's admission under section 212(d)(3) of the Act and 8 CFR 212.15(n). While the DHS may admit, extend the period of authorize stay, or change the status of a nonimmigrant health care worker for a period of 1 year if the alien does not have certification on or before July 26, 2004, the alien will not be eligible for a subsequent admission, change of status, or extension of stay as a health care worker if the alien has not obtained the requisite certification 1 year after the initial date of admission, change of status, or extension of stay as a health care worker.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 7. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681, 8 CFR part 2.

§ 245.14 [Removed and Reserved]

■ 8. Section 245.14 is removed and reserved.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 9. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 11. Section 248.3 is amended by adding a new paragraph (i) to read as follows:

§ 248.3 Application.

* * * * *

(i) *Change of nonimmigrant status to perform labor in a health care occupation.* A request for a change of nonimmigrant status filed by, or on behalf of, an alien seeking to perform labor in a health care occupation as provided in 8 CFR 212.15(c), must be accompanied by a certificate as described in 8 CFR 212.15(f), or if the alien is eligible, a certified statement as described in 8 CFR 212.15(h). See 8 CFR 214.1(j) for a special rule concerning applications for change of status for aliens admitted temporarily under section 212(d)(3) of the Act and 8 CFR 212.15(n).

PART 299—IMMIGRATION FORMS

■ 10. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

■ 13. Section 299.1 is amended in the table by adding ''Form I–905'' to the list of prescribed forms in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–905	04–15–02	Application for Authorization to Issue Certification for Health Care Workers.
*	*	*

■ 14. Section 299.5 is amended in the table by:

■ a. Adding the Form ''I–905'' in proper alpha/numeric sequence; and by

■ b. Adding the entry ''Certificates for Health Care Benefits'' at the end of the table.

The additions read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	*	*
I–905	Application for Authorization to Issue Certification for Health Care Workers.	1115–0238
*	*	*
	Certificates for Health Care Benefits.	1115–0226

Dated: July 17, 2003.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 03–18710 Filed 7–24–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15299; Airspace Docket No. 03–AWP–9]

Modification of Class E Airspace; Window Rock, AZ; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a rule that was published in the **Federal Register** on June 19, 2003, (68 FR 36743; FR Doc. 03–15526). It corrects an error in the legal description of the 1,200 Class E airspace for Window Rock, AZ.

DATES: The direct final rule is effective at 0901 UTC on September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Branch, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: The FAA published FR Document 03–15526 in the **Federal Register** on June 19, 2003, (68 FR 36743) to modify Class E airspace at Window Rock, AZ. The paragraph pertaining to the legal description of the 1,200' Class E airspace was described incorrectly. The following information corrects the

airspace legal description for Window Rock, AZ.

§ 71.1 [Corrected]

■ On page 36744, column 2, beginning with the 2nd line from the top, change to read: That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at Lat. 36°04′00″ N, Long. 109°27′00″ W; to Lat. 36°07′00″ N, Long. 109°23′00″ W; to Lat. 35°54′00″ N, Long. 109°03′00″; thence along Lat. 35°54′00″ N to the western edge of V–421 and thence southwest along the western edge of V–421 to Lat. 35°13′15″ N, Long. 109°06′02″ W; to Lat. 35°20′25″ N, Long. 109°10′42″ W; to Lat. 35°08′00″ N, Long. 109°25′00″ W; to Lat. 35°08′00″ N, Long. 109°30′00″ W; thence north along Long. 109°30′00″ W to the southern edge of V–95; thence northeast along the southern edge of V–95 to Lat. 35°54′54″ N, Long. 109°13′10″ W; to the point of beginning.

Issued in Los Angeles, California, July 16, 2003.

Stephen Lloyd,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–18919 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 030613151–3151–01]

Florida Keys National Marine Sanctuary; Establishment of Temporary No-Entry Zone in the White Bank Dry Rocks Area; Correction

AGENCY: National Ocean Service (NOS), National Marine Sanctuary Program.

ACTION: Temporary rule; correction.

SUMMARY: This document corrects coordinates published on July 1, 2003 for a no-entry zone in the Florida Keys National Marine Sanctuary. The no-entry zone was established by a temporary rule and became effective June 26, 2003 until August 25, 2003. That temporary rule created two no-entry zones in the vicinity of White Bank Dry Rocks off of Key Largo to prevent the inadvertent spread by swimmers and snorkelers of infectious agents associated with diseased corals in the two zones. Each no-entry zone is approximately 0.25 square miles in size. This document corrects the coordinates of White Bank South Patch that were incorrectly described in the temporary published on July 1, 2003.

DATES: Effective July 24, 2003 until August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Billy D. Causey, Superintendent, Florida Keys National Marine Sanctuary, (FKNMS), Post Office Box 500368, Marathon, Florida 33050, (305) 743–2467.

SUPPLEMENTARY INFORMATION:

Need for Correction

The temporary rule establishing no-entry zones at White Bank North Patch and White Bank South Patch, off of Key Largo in the Florida Keys National Marine Sanctuary (68 FR 39005; July 1, 2003), contained errors in the coordinates for White Bank South Patch. The correct coordinates are:

White Bank South Patch—

(1) 25 degrees 02.414 seconds N 80 degrees 22.425 seconds W;

(2) 25 degrees 02.446 seconds N 80 degrees 22.267 seconds W;

(3) 25 degrees 02.314 seconds N 80 degrees 22.278 seconds W;

(4) 25 degrees 02.336 seconds N 80 degrees 22.408 seconds W.

Classification

Under 5 U.S.C. 553(b)(B), the Assistant Administrator of the National Ocean Service, NOAA, for good cause, finds that providing prior notice and public procedure thereon with respect to this correction is impracticable and contrary to the public interest. Recent evidence has come to light of an outbreak of infectious coral disease in areas of White Bank Dry Rocks near Key Largo. It is possible that humans entering the waters of the affected areas could inadvertently carry infectious agents to healthy coral reef areas. Infected corals are also most subject to stress from human activities. This action is intended to limit the innocent spread of infectious agents to healthy coral and to reduce stress to corals within the infected areas. As such, further damage to the infected corals as well as to healthy corals outside of the close areas would occur if the prohibition implemented by this rule is delayed to provide prior notice and opportunity for public comment.

Likewise, under 5 U.S.C. 553(d)(3), the Assistant Administrator of the National Ocean Service, NOAA, finds good cause to waive the 30-day delay in effective date for this correction. First, if the correction is delayed for 30 days, significant damage to the living coral resources could result. Further, 30 days are not necessary to give notification to visitors who might use the area in the future to move to other nearby sites. The U.S. Coast Guard will give immediate notification to vessels to stay out of the no-entry zones. Notification will be made by the U.S. Coast Guard via notice to mariners, Sanctuary radio announcements, press releases, press conferences, and with assistance by the U.S. Coast Guard and Sanctuary staff on the water within the area. This correction is effective upon filing at the Office of the **Federal Register**.

Dated: July 19, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–18933 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–NK–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2016

RIN 0350–AA06

Establishment of a Petition Process To Review Eligibility of Countries for the Benefits of the Andean Trade Preference Act, as Amended by the Andean Trade Promotion and Drug Eradication Act

AGENCY: Office of the United States Trade Representative.

ACTION: Final rule.

SUMMARY: This final rule provides for the establishment of a petition process to review the eligibility of countries for the benefits of the Andean Trade Preference Act, as amended by the Andean Trade Promotion and Drug Eradication Act.

DATES: This final rule is effective on July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Office of the Americas, Office of the United States Trade Representative at (202) 395–5190.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002 (Pub. L. 107–210) (Trade Act) includes the ''Andean Trade Promotion and Drug Eradication Act'' (ATPDEA), which contains provision on enhanced trade benefits for eligible Andean countries. The ATPDEA renews and amends the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201 *et seq.*) Section 3103(d) of the ATPDEA requires the President to promulgate regulations regarding the review of eligibility of articles and countries for the benefits of the ATPA, consistent with section 203(e) of the ATPA, as amended by the ATPDEA, not later than 180 days after the date of enactment of the Trade Act of 2002. The Trade Act was enacted on August 6, 2002. In Executive Order 13277 of November 19,

2002, the President assigned this function to the U.S. Trade Representative (USTR).

Section 203(e) of the ATPA, as amended, gives the President the authority to withdraw or suspend the designation of any ATPA or ATPDEA beneficiary country, or withdraw, suspend, or limit the application of preferential treatment under the ATPA, as amended by the ATPDEA, to any article of any such country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria of the ATPA and ATPDEA. Section 203(e) also establishes certain procedural guidelines for taking any of the actions described above.

An interim rule, on a final and emergency basis, was published in the **Federal Register** (68 FR 5542) for public comment on February 4, 2003. Consistent with section 3103(d)(2) of the ATPDEA, the interim rule was similar to the regulations governing the annual review used to modify the U.S. Generalized System of Preferences (GSP), which is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended. The interim rule established an annual review that allows for public input, and includes procedures for requesting the withdrawal, suspension, or limitation of preferential duty treatment under the ATPA, as amended, and for reviewing such requests and implementing granted requests. USTR received two submissions with several comments on the interim rule. The following summarizes the comments and USTR's response to them. USTR has also made technical changes to the final regulations that do not affect the substance of the provision.

Comments

1. *Public Comment:* The regulations must provide for an article eligibility review as well as a country eligibility review.

USTR Response: The interim rule, consistent with section 203(e) of the ATPA, as amended, and section 3103(d) of the ATPDEA, addressed the issue of article eligibility in the context of country eligibility. The commenter suggests that the ATPDEA also requires the regulations to allow for petitions to add articles pursuant to section 204(b)(1) of the ATPA, as amended, which gives the President authority to proclaim certain articles as eligible for duty-free treatment under the ATPA if he determines that an article is not ''import-sensitive in the context of imports from ATPDEA beneficiary countries.''

In response, USTRA notes first that section 3103(d)(1) requires the President to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA, consistent with section 203(e). As noted above, the President assigned this function to the USTR per Executive Order. Section 203(e) gives the President the authority to withdraw or suspend the designation of any ATPA or ATPDEA beneficiary country, or withdraw, suspend, or limit the application of preferential treatment under the ATPA, as amended by the ATPDEA, to any article of any such country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria of the ATPA and ATPDEA. Section 203(e) also establishes certain procedural guidelines for taking any of the actions described above. Second, section 3103(d)(2) requires the regulations to ''include procedures for requesting withdrawal, suspension, or limitations of preferential duty treatment'' under the ATPA.

Section 3103(d)(1) calls for the President (the USTR, by delegation) to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA, ''consistent with section 203(e).'' Section 203(e) refers solely to the withdrawal, suspension, or limitation of preferential duty treatment, and makes no reference to procedures for adding articles to the list of those eligible for preferential treatment. Moreover, section 3103(d)(2), which addresses the content of the regulations that must be promulgated, refers exclusively to procedures for requesting ''withdrawal, suspension, or limitations'' of preferential duty treatment under the ATPA, making no mention of procedures for adding articles. Thus. USTR does not agree that regulations implementing section 3103(d) must include procedures for adding articles pursuant to section 204(b)(1).

2. Public Comment: The regulations must be revised to expressly include the possibility of restoring benefits for an article for which benefits have been withdrawn, suspended, or limited.

USTR Response: Neither the GSP regulations, section 203(e) of the ATPA, as amended, nor section 3103(d) of the ATPDEA addresses the possibility of restoring benefits for an article for which benefits have been withdrawn, suspended, or limited. Consequently, USTR does not consider that it is required to include in the regulations procedures for restoring benefits. However, the ATPA provides authority for the President to restore benefits that were withdrawn, suspended, or limited pursuant to section 203(e) if he determines that the country in question has resumed compliance with the eligibility criteria of the ATPA, as amended by the ATPDEA.

3. Public Comment: The procedures set out in the regulations should more closely adhere to those in the GSP regulations, in particular by limiting the right to file petitions to ''interested parties,'' by establishing a petition process for adding products to the list of eligible articles, and by creating procedures for submitting economic data in support of such petitions.

USTR Response: This commenter makes three recommendations. First, the commenter suggests that the ATPA regulations, like the GSP regulations at 15 CFR 2007.0, should limit the right to file a petition to ''interested parties.'' However, only the GSP provision that addresses petitions related to *product* eligibility under the GSP program, 15 CFR 2007.0(a), limits the right to petition to ''interested parties.'' By contrast, the section of the GSP regulations that addresses *country* eligibility, 15 CFR 20007.0(b), affords the right to petition to ''any person.'' Section 3103(d)(1) of the ATPDEA calls for regulations consistent with section 203(e) of the ATPA, which addresses both country and product eligibility. However, section 203(e) provides that any action to remove benefits for products must be based on a determination that a country no longer meets the eligibility criteria for ATPA benefits. It would be inappropriate to limit petitions addressing the broad range of issues related to a country's eligibility for benefits under the ATPA solely to ''interested parties,'' as that term is defined in 15 CFR 2007.0(d). Rather, ''any person'' should be eligible to raise concerns about whether a country is continuing to meet the relevant eligibility criteria. Therefore, consistent with the broader approach to country eligibility petitions in the GSP regulations, the final ATPA regulations will permit ''any person'' to submit a petition seeking either the suspension or withdrawal of country eligibility or duty-free treatment. (The interim final rule inadvertently referred to ''any person'' as ''any party'' in several places. That error has been corrected in the final regulations.)

Second, the commenter suggests that the ATPA regulations should be similar to the GSP regulations in that they should contain procedures for adding products in accordance with section 204(b)(1) of the ATPA, as amended. This recommendation is addressed in

response to the first public comment above.

Lastly, the commenter suggests that, if USTR amends the regulations to authorize petitions that seek to add products in accordance with section 204(b)(1) of the ATPA, as amended, USTR should spell out the information to be provided in support of such petitions. Because USTR has decided not to amend the interim rule in the manner suggested, it is not necessary to address this recommendation.

4. Public Comment: Columbia should meet its commitment to cease applying a price band adjustment to imports of dry pet food.

USTR Response: This comment was previously submitted in response to USTR notice, published in the **Federal Register** on August 15, 2002 (67 FR 53379), requesting public comment on the designation of eligible countries as ATPDEA beneficiary countries. The interagency Andean subcommittee of the Trade Policy Staff Committee (TPSC) has already considered and acted on this comment.

The Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, a Regulatory Flexibility Analysis is not required under sections 603 or 604 because USTR is not publishing a Notice of Proposed Rulemaking. This final rule is significant under Executive Order 12866 of September 30, 1993, and has been review by the Office of Management and Budget.

List of Subjects in 15 CFR Part 2016

Administrative practice and procedure, Confidential business information, Foreign Trade.

■ For the reasons set out in the **SUPPLEMENTARY INFORMATION** section of this document, 15 CFR part 2016 revised to read as follows:

PART 2016—PROCEDURES TO PETITION FOR WITHDRAWAL OR SUSPENSION OF COUNTRY ELIGIBILITY OR DUTY-FREE TREATMENT UNDER THE ANDEAN TRADE PREFERENCE ACT (ATPA), AS AMENDED

Sec.

2016.0 Requests for reviews.
2016.1 Action following receipt of petitions.
2016.2 Timetable for reviews.
2016.3 Publication regarding requests.
2016.4 Information open to public inspection.
2016.5 Information exempt from public inspection.

Authority: 19 U.S.C. 3201, *et seq.*; sec. 3103(d), Pub. L. 107–210; 116 Stat. 933; E.O. 13277, 67 FR 70303.

§ 2016.0 Requests for reviews

(a) Any person may submit a request (hereinafter ''petition'') that the designation of a country as an Andean Trade Preference Act (ATPA) beneficiary country be withdrawn or suspended, or the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country be withdrawn, suspended, or limited. Such petitions should: include the name of the person or the group requesting the review; identify the ATPA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 203(c) or (d) (19 U.S.C. 3202(c), (d)) eligibility criterion that the petitioner believes warrant(s) review; and include all available supporting information. The Andean Subcommittee of the Trade Policy Staff Committee (TPSC) may request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the petitioner should consider providing the Andean Subcommittee with any new information related to the issue.

(b) Any person may submit a petition that the designation of a country as an Andean Trade Promotion and Drug Eradication At (ATPDEA) beneficiary country be withdrawn or suspended, or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C.. 3202(b)(1), (3), (4)) be withdrawn, suspended, or limited. Such petitions should: Include the name of the person or the group requesting the review; identify the ATPDEA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 204(b)(6)(B) (19 U.S.C. 3203(b)(6)(B)) eligibility criterion or criteria that the petition believes warrant(s) review; and include all available supporting information. The Andean Subcommittee may request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the petitioner should consider providing the Andean Subcommittee with any new information related to the issue.

(c) All petitions and other submissions should be submitted in accordance with the schedule (*see* § 2016.2) and requirements for submission that The Office of the United States Trade Representative (USTR) will publish annually in the **Federal Register** in advance of each review. Foreign governments may make submission in the form of diplomatic correspondence and should observe the deadlines for each annual review published in the **Federal Register**.

(d) The TPSC may at any time, on its own motion, initiate a review to determine whether: the designation of a country as an ATPA beneficiary country should be withdrawn or suspended; the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country should be withdrawn, suspended, or limited; the designation of a country as an ATPDEA beneficiary country should be withdrawn or suspended; or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), or (4) should be withdrawn, suspended, or limited.

(e) Petitions requesting the action described in paragraph (a) or (b) of this section that indicate the existence of exceptional circumstances warranting an immediate review may be considerd outside of the schedule for the annual review announced in the **Federal Register**. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

§ 2016.1 Action following receipt of petitions.

(a) USTR shall publish in the **Federal Register** a list of petitions filed in response to the announcement of the annual review, including the subject matter of the request and, where appropriate, the description of the article or articles covered by the request.

(b) Thereafter, the Andean Subcommittee shall conduct a preliminary review of the petitions, and shall submit the results of its preliminary review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the ATPA. The Chairman of the TPSC may, as appropriate, convene the Trade Policy Review Group (TPRG) to review the matter, and thereafter refer the

matter to the USTR for Cabinet-level review as necessary.

(c) The USTR, after receiving the advice of the TPSC, TPRG, or Cabinet-level officials, shall make recommendations to the President on any proposed action to modify the application of the ATPA's benefits to countries or articles. The President (or if that function is delegated to the USTR, the USTR) shall announce in the **Federal Register** any such action he proposes to take. The USTR shall announce in the **Federal Register** notice of the results of the preliminary review, together with a schedule for receiving public input regarding such proposed action consistent with section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)).

(1) The schedule shall include the deadline and guidelines for any person to submit written comments supporting, opposing or otherwise commenting on any proposed action.

(2) The schedule shall also include the time and place of the public hearing, as well as the deadline and guidelines for submitting requests to present oral testimony.

(d) After receiving and considering public input, the Andean Subcommittee shall submit the results of the final review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the application of benefits under the ATPA to countries or articles. The Chairman of the TPSC may, as appropriate, convene the TPRG to review the matter, and thereafter refer the matter to the USTR for Cabinet-level review as necessary. The USTR, after receiving the advice of the TPSC, TPRG, or Cabinet-level officials, shall make recommendations to the President on any proposed action to modify the application of the ATPA's benefits to countries or articles, including recommendations that no action be taken. The USTR shall also forward to the President any documentation necessary to implement the recommended proposed action or actions to modify the application of the ATPA's benefits to countries or articles.

(e) In considering whether to recommend any proposed action to modify the ATPA, the Andean Subcommittee, on behalf of the TPSC, TPRG, or Cabinet-level officials, shall review all relevant information submitted in connection with a petition or otherwise available.

§ 2016.2 Timetable for reviews.

Beginning in calendar year 2003, reviews of pending petitions shall be conducted at least once each year, according to the following schedule, unless otherwise specified by **Federal Register** notice:

(a) September 15: Deadline for submission of petitions for review;

(b) On or about December 1: Announcement published in the **Federal Register** of the results of preliminary review;

(c) Decemeber/January: Written comments submitted and a public hearing held on any proposed actions;

(d) February/March: Preparation of recommendations to the President, Presidential decision, and implementation of Presidential decision.

§ 2016.3 Publication regarding requests.

Following the Presidential decision and where required, the publication of a Presidential proclamation modifying the application of benefits under the ATPA to countries or articles in the **Federal Register,** USTR will publish a summary of the decisions made in the **Federal Register,** including:

(a) For petitions on which decisions were made, a description of the outcome of the review; and

(b) A list of petitions on which no decision was made, and thus which are pending further review.

§ 2016.4 Information open to public inspection.

With the exception of information subject to § 2016.5, any person may, on request, inspect in the USTR Reading Room:

(a) Any written petition, comments, or other submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings held pursuant to this part.

§ 2016.5 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if USTR determines that the disclosure of such information is not required by law.

(b) A person requesting an exemption from public inspection for information submitted in writing shall clearly mark each page ''BUSINESS CONFIDENTIAL'' at the top, and shall submit a non-confidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if USTR determines that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

John K. Veroneau,

General Counsel.

[FR Doc. 03–18957 Filed 7–24–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Phenylbutazone Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Bioniche Animal Health USA, Inc. The ANADA provides for oral use of phenylbutazone paste in horses for relief of inflammatory conditions associated with the musculoskeletal system.

DATES: This rule is effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Bioniche Animal Health USA, Inc., 119 Rowe Rd., Athens, GA 30601, filed ANADA 200–266 for the oral use of BUTEQUINE (phenylbutazone) Paste in horses for relief of inflammatory conditions associated with the musculoskeletal system. Bioniche Animal Health's BUTEQUINE Paste is approved as a generic copy of Schering-Plough Animal Health's PHENYLZONE (phenylbutazone) Paste, approved under NADA 116–087. The ANADA is approved as of February 21, 2003, and the regulations are amended in 21 CFR 520.1720c to reflect the approval and current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness

data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 520.1720c is amended by revising paragraphs (a) and (b), by removing paragraph (c), and by redesignating paragraph (d) as new paragraph (c) to read as follows:

§ 520.1720c Phenylbutazone paste.

(a) *Specifications*—(1) Each gram of paste contains 0.2 grams phenylbutazone.

(2) Each gram of paste contains 0.35 grams phenylbutazone.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) Nos. 000061 and 010797 for use of product described in paragraph (a)(1) of this section.

(2) No. 064847 for use of product described in paragraph (a)(2) of this section.

* * * * *

Dated: July 3, 2003.

Andrew J. Beaulieu,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–18910 Filed 7–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–013]

RIN 1625–AA00

Safety Zone; Fireworks Display in the Captain of the Port Portland Zone, Colombia River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Astoria Regatta Fireworks Display established by 33 CFR 165.1316 on July 17, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1316 will be enforced August 9, 2003 from 9:30 p.m. until 10:30 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave., Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On July 17, 2003, the Coast Guard published a final rule (68 FR 42289) establishing a safety zone, in 33 CFR 165.1316, to provide for the safety of vessels in the vicinity of the Astoria Regatta fireworks display. The safety zone will include all waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123°49′36″ West to 46°11′51″ North thence east to 123°48′53″ West thence south to the Oregon shoreline and finally westerly along the Oregon shoreline to the point of origin. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on August 9, 2003 from 9:30 p.m. until 10:30 p.m. (PDT). The Captain of the Port may be assisted by other Federal, state, or local agencies in enforcing this security zone.

Dated: July 9, 2003.

Paul D. Jewell,

Captain, Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–18918 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–399]

RIN 1625–AA00

Safety Zones; Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during August 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: Effective from 12:01 a.m. on August 1, 2003, to 11:59 p.m. on August 31, 2003.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9580.

SUPPLEMENTARY INFORMATION:

The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907 (a)(22) and (23) (66 FR 27868, May 21, 2001), for fireworks displays in the Captain of the Port Detroit Zone during August 2003. The following safety zones are in effect for fireworks displays occurring in the month of August 2003:

(1) *Maritime Day Fireworks, Marine City, MI.* This safety zone will be enforced on August 9, 2003, from 8 p.m. until 11:59 p.m.

(2) *Venetian Festival Boat Parade & Fireworks, St. Clair Shores, MI.* This safety zone will be enforced on August 9, 2003, from 7 p.m. until 11:59 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be enforced for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis. Requests must be made in advance and approved by the Captain of the Port Detroit before transits will be authorized. The Captain of the Port Detroit may be contacted via U.S. Coast Guard Group Detroit on Channel 16, VHF–FM.

Dated: July 14, 2003.

S.K. Moon,

Lieutenant Commander, Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 03–18923 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL68

Medication Prescribed by Non-VA Physicians

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This rule amends VA's medical regulations that govern the provision of medication to veterans when the medication is prescribed by non-VA physicians. The rule provides that, in limited circumstances, VA may provide medication prescribed by a non-VA physician to veterans enrolled in VA's health care system prior to July 25, 2003, if the veterans have requested an initial appointment for primary care in a VA health care facility before July 25, 2003, and were unable to obtain an initial appointment for primary care within 30 days. The rule establishes specific requirements that veterans must meet to receive such medications and it establishes limits on the types and quantities of medication VA may provide. VA's intent is to assist enrolled veterans who have requested primary care appointments but who have not been able to obtain one within 30 days.

DATES: *Effective Date:* This interim final rule is effective on July 25, 2003; except for 38 CFR 17.96(e) which is effective August 25, 2003.

Comment Dates: Comments on the rule must be received on or before September 8, 2003; except that comments on the request for emergency approval of the collection of information provisions must be received on or before August 25, 2003.

Applicability Date: Benefits may be provided commencing September 22, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL68.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Kendra Drew, Chief Business Office (16), at (202) 254–0329 and Virginia Torrise, Pharmacy Benefits Management, Deputy Chief Consultant (119), at (202) 273–8426. These individuals are in the Veterans Health Administration of the Department of Veterans Affairs, located at 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: Under existing law and regulations, a veteran desiring medical care from VA must enroll in VA's health care system, except for veterans whose service-connected disabilities are 50% or greater, or any veteran seeking treatment for a service-connected condition. When a veteran first enrolls in the VA system, and requests an appointment for care, VA schedules an appointment for a visit with a primary care physician. During that first appointment, a VA health care provider examines the veteran and determines what care the veteran needs. That primary care physician generally learns from the veteran what medication the veteran is taking, if any, assesses the need for medication, and writes prescriptions for any needed medication. Those prescriptions written by the VA physician are then filled by a VA pharmacy.

In recent years, VA has faced an extraordinary increase in demand for health care services. The increased demand has been caused, at least in part, by veterans enrolling in the VA health care system to obtain pharmacy benefits at no cost or at a reasonable cost. With dramatically increased enrollment, VA has been unable to provide all enrolled veterans with services in a timely manner. In many places that means veterans may wait a considerable length of time to receive an initial primary care visit. Many of those veterans have prescriptions, written by non-VA physicians, that VA primary care physicians may confirm and renew when the veterans are able to have initial primary care visits. In an effort to ease the financial burden on enrolled veterans currently waiting lengthy periods of time for their initial primary care visits, VA will provide these veterans with medications prior to their initial primary care visits at VA if these veterans present valid prescriptions from their non-VA physicians. VA will fill prescriptions written by non-VA physicians only for the period of time such veterans are awaiting a scheduled appointment with a VA health care provider. VA anticipates asking the veterans whether they want to have the next available appointment, or whether they want to postpone the initial appointment. VA will schedule the veterans' initial appointments within the period covered by the prescriptions written by their non-VA physicians. VA anticipates that some veterans will choose to postpone the initial appointment, shortening waiting lists and making appointment dates available to other veterans.

VA anticipates that in the near future, it will be able to provide all enrolled veterans with primary care in a timely manner. That would effectively eliminate the need for providing medications under this rule. However, it is important that VA have such regulations in place until such time as waiting periods can be reduced.

VA is undertaking this rulemaking pursuant to its authority under 38 U.S.C. 1710(a) to furnish needed medical services. As clarified in paragraph (a) of this rule, VA does not generally fill prescriptions for veterans that are written by non-VA physicians. Instead, VA usually provides only medications prescribed by VA physicians or VA contractors retained for that purpose. This is consistent with the primary purpose of the Veterans Health Administration, which is to provide integrated comprehensive health care for veterans, not simply act as a conduit for furnishing prescription medications.

In light of the backlog of veterans seeking VA care, however, the Secretary has determined that the filling of some prescriptions written by non-VA physicians is needed during the period of time such veterans are awaiting a scheduled appointment with a VA health care provider. As a result, paragraph (b) of this rule states that beginning September 22, 2003, VA may furnish medications for veterans enrolled in VA's health care system prior to July 25, 2003, if the veterans have requested an initial appointment for primary care in a VA health care facility before July 25, 2003, and the next available appointment date is scheduled more than 30 days after the veteran requests the appointment. VA chose the 30-day limitation because it is generally considered reasonable in the community at large to expect that one could obtain a first time primary care visit with a physician within 30 days. VA chose to limit the provision of medications in question to only those veterans enrolled prior to July 25, 2003, in order to specifically address the

problems of currently enrolled veterans facing lengthy waits for initial primary care appointments in a cost-effective manner. (*See* 38 U.S.C. 1706(a) requiring VA to ''design, establish and manage health care programs in such a manner as to promote cost-effective delivery of health care services''). Moreover, without these limitations, the very issuance of the new rule could invite an influx of new enrollments and requests for appointments, exacerbating the wait-time problem the rule is intended to address. This rule also should benefit those who enroll after the effective date or attempt to make appointments after that date. By allowing those presently enrolled and waiting more than 30 days to reschedule appointments at dates closer to expiration of presently held non-VA prescriptions, additional near term appointments should become available for those who are not entitled to this limited benefit. Thus, the out-of-pocket costs for prescriptions filled while waiting for VA appointments should also be reduced for those not specifically included in this rule because their waiting time should be reduced.

Paragraph (c) of this rule states that VA may furnish an amount of medication that will appropriately meet the treatment needs of veterans until the date of the veterans' initial appointment for primary care in a VA facility. If veterans choose to postpone their initial appointment date until they have used all of the medication prescribed by the non-VA provider, VA will furnish the amount prescribed, including refills. VA will furnish such medications consistent with long-standing pharmacy practices. The decision on the precise quantity of medication that would be needed is generally considered to be a medical determination and would be left to appropriate VA clinicians including pharmacists.

Paragraph (d) of this rule states that if VA reschedules an initial appointment for primary care in a VA health care facility for veterans eligible under this rule, or if veterans reschedule their appointments for good reasons, as determined by the local VA medical facility, VA may furnish the eligible veterans with a quantity of medication that is sufficient to meet the treatment needs of the veterans until the date of the veterans' rescheduled appointments for primary care in a VA health care facility. If VA reschedules veterans' initial primary care visits, it is reasonable that VA would provide additional medication to meet the veterans' needs until the date of their rescheduled appointments. VA also understands that there are occasions when, for good cause, veterans might be forced to cancel appointments. For example, if the veteran had to reschedule an appointment because of inclement weather, or because of the illness or death of a family member, VA would not disqualify the veteran from continuing to receive the benefits of this remedial program. However, VA would not furnish medications to veterans who simply cancel or reschedule and extend their appointments without good reasons.

Paragraph (e) of this rule states that VA may furnish medications beginning on September 22, 2003, only if veterans provide VA with written current prescriptions for their medications signed by duly licensed physicians within the previous 90 days. To ensure the health and safety of veterans, VA will only fill prescriptions when veterans present VA with written prescriptions signed by licensed physicians. VA will not accept prescriptions called in by veterans' non-VA pharmacies or non-VA health care providers. VA lacks the resources to accept and manage those calls.

Paragraph (f) of this rule states that VA may furnish only medication under paragraph (b) that (1) must be dispensed by prescription, (2) is not an over-the-counter medication, (3) is not listed as a controlled substance under schedule I through V of the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. 812, (4) is included on VA's National Formulary, unless VA determines a non-Formulary medication is medically necessary, and (5) is not an acute medication, intravenous medication, nor one required to be administered only by a medical professional. By providing only medications that must be dispensed by prescription, VA is not furnishing over-the-counter drugs. Veterans can easily purchase over-the-counter medications without regard to whether they are able to schedule visits with a physician. For patient health and safety reasons, VA will not furnish controlled substances without a VA physician first seeing the patient and ordering the medication. VA will furnish veterans with medications prescribed by non-VA physicians only if the medication is on VA's National Formulary, or approved in advance through a special approval process. If a veteran provides VA with a prescription for medications that are not on VA's formulary, VA will contact the physician who wrote the prescription to determine whether a medication on VA's formulary is appropriate, and if not, the medical reasons why it is not appropriate. If VA determines that a medication is medically necessary, but is not on VA's formulary, VA will provide that medication. Finally, acute medications, intravenous medications, and medications required to be administered only by a medical professional will not be furnished because under this rule prescriptions will be filled only by mail.

Paragraph (g) of this rule provides that the existing copayment requirements applicable to VA furnishing medication will apply to medications furnished under this rule. Statutes (*e.g.*, 38 U.S.C. 1722A) require application of the copayment requirements.

Paragraph (h) of this rule provides that VA will furnish medications under this rule only by having the medication mailed to the veteran, typically by one of VA's Consolidated Mail Out-patient Pharmacies, or with VA contract pharmacies. Therefore, this benefit is not useful for veterans who require acute medications, intravenous medications, or medications to be administered only by a medical professional. VA pharmacies will not directly furnish medications or reimburse veterans for medications that they obtain from non-VA pharmacies.

Paragraph (i) of this rule restates, with no substantive change, longstanding regulatory provisions regarding prescriptions found in § 17.96.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found for this rule that notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and that we have good cause to dispense with notice and comment on this rule and to dispense with a 30-day delay of its effective date. This is an effort to ease the financial burden on enrolled veterans currently waiting lengthy periods of time for their initial primary care visits. Delaying implementation of this benefit would only exacerbate the problems veterans are experiencing while waiting for VA treatment.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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 interim final rule at § 17.96(e) contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information. We have requested OMB to approve the collection of information on an emergency basis by August 25, 2003. If OMB does not approve the collections of information as requested, we will immediately remove § 17.96(e) or take such other action as is directed by OMB.

We are also seeking an approval of the information collection on a non-emergency basis. Accordingly, we are also requesting comments on the collection of information provisions contained in § 17.96(e) on a non-emergency basis. Comments must be submitted by September 23, 2003.

OMB assigns a control number for each collection of information it approves. VA 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.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, or faxed to 202 395–6974, with copies mailed or hand-delivered to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AL68.''

Title: Medication Prescribed by non-VA Physicians.

Summary of collection of information: The interim final rule at § 17.96(e) contains application provisions for written prescriptions and information requirements. The interim rule at § 17.96(e) contains requirements for provision of medication to veterans when the medication is prescribed by non-VA physicians.

Application Provisions for Written Prescriptions and Information Requirements.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for provision of medication to veterans when the medication is prescribed by non-VA physicians.

Description of likely respondents: veterans and treating physicians.

Estimated number of respondents per year: 181,723.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 33,316 hours.

Estimated annual burden per collection: 11 minutes.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: July 17, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, VA is amending 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.96 is revised to read as follows:

§ 17.96 Medication prescribed by non-VA physicians.

(a) *General.* VA may not furnish a veteran with medication prescribed by a duly licensed physician who is not an employee of the VA or is not providing care to the veteran under a contract with the VA, except as provided in paragraphs (b) through (i) of this section.

(b) *Medication furnished prior to an initial primary care appointment.* Beginning on September 22, 2003, VA may furnish medication prescribed by a non-VA physician for a veteran enrolled under § 17.36 of this part prior to July 25, 2003, who had prior to July 25, 2003, requested an initial appointment for primary care in a VA health care facility, and the next available appointment date was more than 30 days from the date of the request.

(c) *Quantity of medication.* VA may furnish a quantity of medication under

paragraph (b) of this section that is sufficient to appropriately meet the treatment needs of the veteran until the date of the veteran's initial appointment for primary care in a VA health care facility.

(d) *Appointment cancellation.* If VA reschedules a veteran eligible under paragraph (b) for an initial appointment for primary care in a VA health care facility, or if such a veteran reschedules the appointment for good cause, as determined by the local VA treatment facility, VA may furnish the eligible veteran with a quantity of medication under paragraph (b) of this section that is sufficient to appropriately meet the treatment needs of the veteran until the date of the veteran's rescheduled appointment for primary care in a VA health care facility.

(e) *Written prescription and information requirements.* VA may furnish medication under paragraph (b) of this section only if the veteran provides VA with a written prescription for the medication signed by a duly licensed physician within the previous 90 days.

(1) *The veteran must furnish the following information:*

(i) Name;

(ii) Date of Birth;

(iii) Social Security Number;

(iv) Home address;

(v) Phone number (with area code);

(vi) Name of Health Insurance Company and Health Insurance Policy Number;

(vii) List of any allergies;

(viii) History of any adverse reaction to any medication;

(ix) List of current medications, including over-the-counter medications or herbal supplements; and

(x) Indication of whether the VA pharmacist may call a non-VA physician for information regarding medications.

(2) The non-VA physician must furnish the following information:

(i) Name;

(ii) Group practice name;

(iii) Social Security Number or Tax ID number;

(iv) License Number;

(v) Office address;

(vi) Phone number and fax number; and

(vii) E-mail address.

(f) *Medications that may be furnished.* VA may furnish medication under paragraph (b) of this section only if the medication:

(1) Must be dispensed by prescription;

(2) Is not an over-the-counter medication;

(3) Is not listed as a controlled substance under schedule I through V of the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. 812;

(4) Is included on VA's National Formulary, unless VA determines a non-Formulary medication is medically necessary; and

(5) Is not an acute medication, an intravenous medication nor one required to be administered only by a medical professional.

(g) *Copayments.* Copayment provisions in § 17.110 of this part apply to medication furnished under paragraph (b) of this section.

(h) *Mailing of Medications.* VA may furnish medication under paragraph (b) of this section only by having the medication mailed to the veteran.

(i) *Medications for veterans receiving increased compensation or pension.* Any prescription, which is not part of authorized Department of Veterans Affairs hospital or outpatient care, for drugs and medicines ordered by a private or non-Department of Veterans Affairs doctor of medicine or doctor of osteopathy duly licensed to practice in the jurisdiction where the prescription is written, shall be filled by a Department of Veterans Affairs pharmacy or a non-VA pharmacy in a state home under contract with VA for filling prescriptions for patients in state homes, provided:

(1) The prescription is for:

(i) A veteran who by reason of being permanently housebound or in need of regular aid and attendance is in receipt of increased compensation under 38 U.S.C. chapter 11, or increased pension under section 3.1(u) (Section 306 Pension) or section 3.1(w) (Improved Pension), of this title, as a veteran of the Mexican Border Period, World War I, World War II, the Korean Conflict, or the Vietnam Era (or, although eligible for such pension, is in receipt of compensation as the greater benefit), or

(ii) A veteran in need of regular aid and attendance who was formerly in receipt of increased pension as described in paragraph (a)(1) of this section whose pension has been discontinued solely by reason of excess income, but only so long as such veteran's annual income does not exceed the maximum annual income limitation by more than $ 1,000, and

(2) The drugs and medicines are prescribed as specific therapy in the treatment of any of the veteran's illnesses or injuries.

(Authority: 38 U.S.C. 1706, 1710, 17.12(d))

[FR Doc. 03–19011 Filed 7–24–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL7529–6]

RIN 2060–AK67

Protection of Stratospheric Ozone: Ban on Trade of Methyl Bromide with Non-Parties to the Montreal Protocol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this action, EPA is taking direct final action on the regulations that govern the production, import, and export of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act (CAA or the Act) and in accordance with U.S. obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). Specifically, today's amendments reflect the Montreal Amendments to the Protocol, which ban the import or export of methyl bromide (class I, Group VI controlled substance) from or to countries that are not Parties to the 1992 Copenhagen Amendments.

DATES: This rule is effective on October 23, 2003 without further notice, unless EPA receives adverse comment by August 25, 2003, or, if a public hearing is requested, by September 18, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

Written comments on this rule must be received on or before August 25, 2003, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on August 4, 2003. If a hearing is requested it will be held August 19, 2003.

ADDRESSES: Comments may be submitted by mail to Air and Radiation. Send two copies of your comments to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XIII, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The Docket's hours of operation are 8:30 a.m. until 4:30 p.m. Monday through Friday. Comments may also be submitted electronically, through hand delivery or courier. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving

comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. For hand delivery or courier, deliver your comments to: 501 3rd Street NW., Washington, DC 20001, Attention Docket ID No. A–92–13, Section XIII.

FOR FURTHER INFORMATION CONTACT: Kate Choban, U.S. Environmental Protection Agency, Global Programs Division, Stratospheric Programs Implementation Branch (6205J), 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202)–564–3524. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC 20001. You may also visit the Ozone Depletion web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. No adverse comment is expected due to the fact that the U.S. Senate gave its advice and consent to ratification of the Montreal Amendment on October 9, 2002, and this rule simply adopts one of the provisions contained in that Amendment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to implement the methyl bromide trade bans if adverse comments are filed. This rule will be effective on October 23, 2003 without further notice unless we receive adverse comment by August 25, 2003 (or, if a public hearing is requested, by September 18, 2003). If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any persons interested in commenting must do so at this time.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the import and export of methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Importers and Exporters of methyl bromide

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. 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.

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 the Office of Air and Radiation Docket & Information Center, Air Docket ID No. A–92–13, Section XIII. 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 EPA West, 1301 Constitution Ave. NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)–566–1742, Fax: (202)–566–1741. The materials may be inspected from 8:30 a.m. until 4:30 p.m. Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. 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.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of comment period will be marked late. EPA is not required to consider these late comments. If you plan to submit comments, please also notify Kate Choban, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (202) 564–3524.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments.

2. By Mail. Send two copies of your comments to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XIII, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

3. By Hand Delivery or Courier. Deliver your comments to: 501 3rd Street NW., Washington, DC, 20001, Attention Docket ID No. A–92–13, Section XIII. Such deliveries are only accepted during the Docket's normal hours of operation as identified under **ADDRESSES.**

4. By Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID No. A–92–13, Section XIII.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the mail or courier addresses listed in Units C.2 or C.3, as appropriate, to the attention of Air Docket ID No. A–92–13, Section XIII. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Is the Legislative and Regulatory Background of the Phaseout Regulations for Ozone-Depleting Substances?

The Clean Air Act Amendments of 1990 direct the Environmental Protection Agency (EPA) to issue regulations to implement the provisions of the Protocol within the United States through a system of controls on production and consumption of ozone-depleting substances. The current regulatory requirements of the Stratospheric Ozone Protection Program are codified at subpart A to Part 82 of Volume 40 of the Code of Federal Regulations (40 CFR part 82, subpart A). As the control measures of the Protocol have been amended or adjusted, and in consideration of other factors, subpart A has also been amended. For example, the amendments to the Protocol made at the Fourth Meeting of the Parties in Copenhagen in 1992 included an accelerated phaseout of ODS production and consumption. EPA published a final regulation in December of 1993, implementing the United States' accelerated phaseout obligation under the Copenhagen amendments (58 FR 65018).

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of the production and consumption of class I ozone-depleting substances as required under the Protocol and the CAA are accomplished through the Allowance Program.

In developing the Allowance Program, we collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the U.S. for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called ''allowances.'' Due to the complete phaseout of many of the ozone-depleting chemicals, the quantities of allowances granted to companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption

allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, but for a few narrow exemptions.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the class I controlled ozone-depleting substances are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in appendix B and appendix F in subpart A.

III. What Is Methyl Bromide?

Methyl bromide is an odorless and colorless gas used in the U.S. and throughout the world as a fumigant. Methyl bromide, which is toxic to living things, is used in many different situations to control a variety of pests, such as insects, weeds, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide, as well as information on the basis for listing methyl bromide as a class I substance, can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Updated information on methyl bromide can be found at the following sites of the World Wide Web: *http://www.epa.gov/ozone/mbr/* and *http://www.teap.org* or by contacting the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

IV. What Is the Regulatory Background Relating Specifically to Methyl Bromide?

The Parties to the Protocol established a freeze in the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting in Copenhagen. The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing the freeze. EPA published a final rule in the **Federal Register** on December 10, 1993, listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in § 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001 (58 FR 65018). Consistent with the CAA requirements for newly listed class I ozone-depleting substances, this rule established a 2001 phaseout for methyl bromide. In the rule published in the **Federal Register** on December 30, 1993 (58 FR 69235), we established baseline methyl bromide production and consumption allowances for specific companies in § 82.5 and § 82.6.

At their 1997 meeting, the Parties agreed to establish the phaseout schedule for methyl bromide in industrialized countries. The U.S. Congress followed by amending the CAA (in Oct. 1998) to direct EPA to promulgate regulations reflecting the Protocol phaseout date of 2005, with interim phasedown steps in 1999, 2001, and 2003. EPA promulgated a regulation that was published in the **Federal Register** on June 1, 1999 (64 FR 29240), instituting the initial interim reduction of 25 percent in the production and import [1] of methyl bromide for the 1999 and 2000 control periods. In a subsequent rule, published in the **Federal Register** on November 28, 2000 (65 FR 70795), EPA implemented reductions in the production and consumption of methyl bromide for 2001 and beyond, as follows: beginning January 1, 2001, a 50 percent reduction in baseline levels; beginning January 1, 2003, a 70 percent reduction in baseline levels; and, beginning January 1, 2005, the complete phaseout of methyl bromide.

V. What Is the Ban on Trade of Methyl Bromide With non-Parties to the Protocol?

With today's action EPA is proposing to prohibit the import and export of methyl bromide (class I, Group VI controlled substance) from or to a foreign state that is not a Party to the 1992 Copenhagen Amendments to the Protocol. EPA is banning trade in methyl bromide with non-Parties to the Copenhagen Amendments to the Protocol in order to ensure the United States meets its obligations under the Protocol and associated amendments. Article 4, paragraph 1 *qua* of the Protocol bans the import of methyl bromide (Annex E substances) from any country not a Party to the Protocol amendments creating control obligations for methyl bromide (Copenhagen Amendments). Later refinements made to the methyl bromide phaseout schedule were in the form of adjustments, not amendments, and any Party that has ratified the Copenhagen Amendments is subject to those adjustments. Article 4, paragraph 2 *qua* of the Protocol bans exports of methyl bromide to any Party that has not ratified the Copenhagen Amendments to the Protocol. These bans were added as part of the 1997 Montreal Amendments to the Protocol. Section 614 of the CAA states, ''This title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this title shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.'' Pursuant to section 614, today's action fulfills the U.S. obligation to implement the methyl bromide trade ban provisions of the Montreal Protocol.

Current regulations (60 FR 24970; 40 CFR 82.4(l)(2)) prohibit the import and export of certain class I controlled substances from or to foreign states not Parties to the Montreal Protocol or specific amendment packages to the Protocol (*e.g.*, the London Amendments). These bans on imports from and exports to non-Parties to amendment packages reflect an agreed strategy by the Parties to the Montreal Protocol to encourage ratification of each successive amendment package to the Protocol and to ensure that controlled ozone-depleting substances are not provided to countries that have not agreed to control measures.

A list of Parties that have ratified the Montreal Protocol and that have ratified successive amendments to the Protocol is published with today's action in appendix C. For the purposes of today's

[1] The formula for ''consumption'' is production + import − export. Because ''consumption'' encompasses ''production and import'', production and import controls also have the effect of controlling consumption.

methyl bromide trade ban, companies should refer to appendix C to subpart A of part 82 to identify nations that have not yet ratified the Copenhagen Amendments. Today's action prohibits imports of methyl bromide from, or exports of methyl bromide to, these nations that have not ratified the Copenhagen Amendments. EPA will publish notices on a periodic basis to update this list (appendix C) to reflect when Parties ratify the Montreal Protocol and its amendments. For additional information on countries that have ratified the Protocol and its amendments, you may want to visit the website of the United Nations Environmental Program (UNEP) Ozone Secretariat at *http://www.unep.org/ozone/* and look for the ''Status of Ratification''.

Article 4, paragraph 8 of the Protocol recognizes that countries may actually be complying with relevant control measures without having officially ratified the Protocol or its relevant Amendments and permits the Parties to meet and determine that imports from and exports to these countries are permitted. Therefore, EPA is reserving Annex 2 of appendix C for any country determined by the Parties to be complying with the relevant control measures.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. No adverse comment is expected due to the fact that the U.S. Senate gave its advice and consent to ratification of the Montreal Amendment on October 9, 2002, and this rule simply adopts one of the provisions contained in that Amendment. The regulated producers, importers and exporters attended both meetings of the Parties to the Montreal Protocol the year that the trade ban provisions were agreed through an amendment. EPA did not hear from the producers, importers and exporters when this provision was up for consideration by the Parties. Therefore, we do not anticipate any adverse comments on this action. Establishing such a trade ban is now standard practice under the Protocol for controlled ozone-depleting substances. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to implement the methyl bromide trade bans if adverse comments are filed. This rule will be effective on October 23, 2003 without further notice unless we receive adverse comment by August 25, 2003 (or, if a public hearing is requested, by September 18, 2003). If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any persons interested in commenting must do so at this time.

VI. 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 this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of 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 by EPA and OMB that this rule is not a ''significant regulatory action'' within the meaning of the Executive Order.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) previously approved the information collection requirements that can be used to implement today's direct final rule. The previously approved ICR is assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

There is no additional paperwork burden as a result of this rule. Current record keeping will allow EPA to implement the provisions of today's action.

The information collection previously approved will be used to implement the trade ban in paragraph 1 qua under Article 4 of the Montreal Protocol for methyl bromide. The information collection under this rule is authorized under sections 603(b) and 603(d) of the Clean Air Act Amendments of 1990 (CAA). This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in this rule are intended to:

(1) Satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(2) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(3) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in section 603(d) of title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (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.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
1. Chemical and Allied Products, NEC	*424690*	*5169*	*100*

Based on an analysis of the U.S. exports of methyl bromide to specific countries, EPA has determined that only 3 countries of the 50 to whom U.S. producers of methyl bromide have exported over the past three years would be impacted because they have not yet ratified the Copenhagen Amendments to the Protocol. Specifically, the rule would ban the export of 41 metric tonnes to Cyprus, Cote d'Ivoire, and the United Arab Emriates compared to an average export from the entire U.S. of 5,236 metric tonnes. These countries represent less than 1% of all U.S. exports of methyl bromide for the years 2000, 2001, and 2002. So, economic impacts for U.S. producers of methyl bromide would be extremely minimal. The rule will not constrain U.S. farmers' ability to obtain methyl bromide from importers because the major methyl bromide exporting countries have already ratified the Copenhagen Amendments.

After considering the economic impacts of today's final rule on small entities, EPA has concluded 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. None of the entities affected by this rule are considered small as defined by the NAICS Code listed above.

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 by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, 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, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. The provisions in today's rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as those requirements set forth by Congress in section 614 of the Clean Air Act. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

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

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is expected to primarily affect importers and exporters of methyl bromide. EPA is not aware of any current uses of methyl bromide by public sector entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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 final rule does not have tribal implications, as specified in Executive Order 13175. Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

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

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore E.O. 13045 does not apply. This rule is not subject to E.O. 13045 because it implements specific trade measures adopted under the Montreal Protocol and required by section 614 of the CAA.

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

This rule is not a ''significant energy action'' as defined in 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. The National Technology Transfer and Advancement Act

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

VII. Congressional Review

A. Submission to Congress and the Comptroller General

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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 23, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Methyl Bromide, Ozone layer.

Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. Section 82.4 is amended by adding paragraph (l)(5).

§ 82.4 Prohibitions for Class I Controlled Substances.

* * * * *

(l) * * *

(5) Import or export any quantity of a controlled substance listed in Class I, Group VI, in Appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendments (as noted in Appendix C, Annex l, to this subpart), unless that foreign state is complying with the Copenhagen Amendments (as noted in Appendix C, Annex 2, to this subpart).

* * * * *

■ 5. Appendix C to Subpart A is revised to read as follows:

Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, But Not Parties To, The Protocol

Annex 1 to Appendix C of Subpart A—Parties to the Montreal Protocol (as of January 29, 2003)

The check mark [✓] means the particular country ratified the Protocol or the specific Amendment package. Amendment packages are identified by the name of the city where the amendment package was negotiated and agreed. Updated lists of Parties to the Protocol and the Amendments can be located at: *http://www.unep.org/ozone/ratif.shtml.*

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	✓				
Algeria	✓	✓	✓		
Angola	✓				
Antigua and Barbuda	✓	✓	✓	✓	

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Argentina	✓	✓	✓	✓	
Armenia	✓				
Australia	✓	✓	✓	✓	
Austria	✓	✓	✓	✓	
Azerbaijan	✓	✓	✓	✓	
Bahamas	✓	✓	✓		
Bahrain	✓	✓	✓	✓	
Bangladesh	✓	✓	✓	✓	
Barbados	✓	✓	✓	✓	✓
Belarus	✓	✓			
Belgium	✓	✓	✓		
Belize	✓	✓	✓		
Benin	✓	✓	✓		
Bolivia	✓	✓	✓	✓	
Bosnia and Herzegovina	✓				
Botswana	✓	✓	✓		
Brazil	✓	✓	✓		
Brunei Darussalam	✓				
Bulgaria	✓	✓	✓	✓	✓
Burkina Faso	✓	✓	✓	✓	✓
Burundi	✓	✓	✓	✓	✓
Cambodia	✓				
Cameroon	✓	✓	✓		
Canada	✓	✓	✓	✓	✓
Cape Verde	✓	✓	✓	✓	
Central African Republic	✓				
Chad	✓	✓	✓	✓	
Chile	✓	✓	✓	✓	✓
China	✓	✓			
Colombia	✓	✓	✓		
Comoros	✓	✓	✓	✓	✓
Congo	✓	✓	✓	✓	✓
Congo, Democratic Republic of	✓	✓	✓		
Costa Rica	✓	✓	✓		
Cote d'Ivoire	✓	✓			
Croatia	✓	✓	✓	✓	✓
Cuba	✓	✓	✓		
Cyprus	✓	✓			
Czech Republic	✓	✓	✓	✓	✓
Denmark	✓	✓	✓		
Djibouti	✓	✓	✓	✓	
Dominica	✓	✓			
Dominican Republic	✓	✓	✓		
Ecuador	✓	✓	✓		
Egypt	✓	✓	✓	✓	
El Salvador	✓	✓	✓	✓	
Estonia	✓	✓	✓		
Ethiopia	✓				
European Community	✓	✓	✓	✓	✓
Federated States of Micronesia	✓	✓	✓	✓	✓
Fiji	✓	✓	✓		
Finland	✓	✓	✓	✓	✓
France	✓	✓	✓		
Gabon	✓	✓	✓	✓	✓
Gambia	✓	✓			
Georgia	✓	✓	✓	✓	
Germany	✓	✓	✓	✓	✓
Ghana	✓	✓	✓		
Greece	✓	✓	✓		
Grenada	✓	✓	✓	✓	
Guatemala	✓	✓	✓	✓	✓
Guinea	✓	✓			
Guinea Bissau	✓	✓	✓	✓	✓
Guyana	✓	✓	✓	✓	
Haiti	✓	✓	✓	✓	
Honduras	✓	✓	✓		
Hungary	✓	✓	✓	✓	✓
Iceland	✓	✓	✓	✓	
India	✓	✓			
Indonesia	✓	✓	✓		
Iran, Islamic	✓	✓	✓	✓	
Ireland	✓	✓	✓		
Israel	✓	✓	✓		

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Italy	✓	✓	✓	✓	
Jamaica	✓	✓	✓		
Japan	✓	✓	✓	✓	✓
Jordan	✓	✓	✓	✓	✓
Kazakhstan	✓	✓			
Kenya	✓	✓	✓	✓	
Kiribati	✓				
Korea, Democratic People's Republic of	✓	✓	✓	✓	✓
Korea, Republic of	✓	✓	✓	✓	
Kuwait	✓	✓	✓		
Kyrgyzstan	✓				
Lao, People's Democratic Republic	✓				
Latvia	✓	✓	✓	✓	
Lebanon	✓	✓	✓	✓	
Lesotho	✓				
Liberia	✓	✓	✓		
Libyan Arab Jamahiriya	✓	✓			
Liechtenstein	✓	✓	✓		
Lithuania	✓	✓	✓		
Luxembourg	✓	✓	✓	✓	✓
Madagascar	✓	✓	✓	✓	✓
Malawi	✓	✓	✓		
Malaysia	✓	✓	✓	✓	✓
Maldives	✓	✓	✓	✓	✓
Mali	✓	✓			
Malta	✓	✓			
Marshall Islands	✓	✓	✓		
Mauritania	✓				
Mauritius	✓	✓	✓		
Mexico	✓	✓	✓		
Moldova	✓	✓	✓		
Monaco	✓	✓	✓	✓	
Mongolia	✓	✓	✓	✓	
Morocco	✓	✓	✓		
Mozambique	✓	✓	✓		
Myanmar	✓	✓			
Namibia	✓	✓			
Nauru	✓				
Nepal	✓	✓			
Netherlands	✓	✓	✓	✓	✓
New Zealand	✓	✓	✓	✓	✓
Nicaragua	✓	✓	✓		
Niger	✓	✓	✓	✓	
Nigeria	✓	✓	✓	✓	
Norway	✓	✓	✓	✓	✓
Oman	✓	✓	✓		
Pakistan	✓	✓	✓		
Palau	✓	✓	✓	✓	✓
Panama	✓	✓	✓	✓	✓
Papua New Guinea	✓	✓			
Paraguay	✓	✓	✓	✓	
Peru	✓	✓	✓		
Philippines	✓	✓	✓		
Poland	✓	✓	✓	✓	
Portugal	✓	✓	✓		
Qatar	✓	✓	✓		
Romania	✓	✓	✓	✓	
Russian Federation	✓	✓			
Rwanda	✓				
Saint Kitts & Nevis	✓	✓	✓	✓	
Saint Lucia	✓	✓	✓	✓	✓
Saint Vincent and the Grenadines	✓	✓	✓		
Samoa	✓	✓	✓	✓	✓
Sao Tome and Principe	✓	✓	✓	✓	✓
Saudi Arabia	✓	✓	✓		
Senegal	✓	✓	✓	✓	
Seychelles	✓	✓	✓	✓	✓
Sierra Leone	✓	✓	✓	✓	✓
Singapore	✓	✓	✓	✓	
Slovakia	✓	✓	✓	✓	✓
Slovenia	✓	✓	✓	✓	✓
Solomon Island	✓	✓	✓	✓	
Somalia	✓	✓	✓	✓	✓

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
South Africa	✓	✓	✓		
Spain	✓	✓	✓	✓	✓
Sri Lanka	✓	✓	✓	✓	✓
Sudan	✓	✓	✓		
Suriname	✓				
Swaziland	✓				
Sweden	✓	✓	✓	✓	✓
Switzerland	✓	✓	✓	✓	✓
Syrian Arab Republic	✓	✓	✓	✓	
Tajikistan	✓	✓			
Tanzania, United Republic of	✓	✓	✓	✓	✓
Thailand	✓	✓	✓		
The Former Yugoslav Republic of Macedonia	✓	✓	✓	✓	✓
Togo	✓	✓	✓	✓	✓
Tonga	✓				
Trinidad and Tobago	✓	✓	✓	✓	
Tunisia	✓	✓	✓	✓	
Turkey	✓	✓	✓		
Turkmenistan	✓	✓			
Tuvalu	✓	✓	✓	✓	
Uganda	✓	✓	✓	✓	
Ukraine	✓	✓	✓		
United Arab Emirates	✓				
United Kingdom	✓	✓	✓	✓	✓
United States of America	✓	✓	✓		
Uruguay	✓	✓	✓	✓	
Uzbekistan	✓	✓	✓		
Vanuatu	✓	✓	✓		
Venezuela	✓	✓	✓	✓	
Viet Nam	✓	✓	✓		
Yemen	✓	✓	✓	✓	
Yugoslavia	✓				
Zambia	✓	✓			

Annex 2 to Appendix C of Subpart A—Nations Complying with, But Not Parties to, the Protocol [Reserved]

[FR Doc. 03–18856 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7535–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Withdrawal of Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final rule.

SUMMARY: Because the United States Environmental Protection Agency (EPA) received adverse comment, we are withdrawing the direct final rule for Identification and Listing of Hazardous Waste; Final Exclusion, delisting petition from Bekeart Steel, Dyersburg, Tennessee. We published the direct final rule on June 2, 2003, (68 FR 32645–32656). We stated in that direct final rule that if we received adverse comment by July 17, 2003, we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. EPA is withdrawing the direct final rule on the delisting petition submitted by Bekaert Steel, Inc, for the Dyersburg, Tennessee facility.

DATES: The direct final rule published at 68 FR 32645, June 2, 2003, is withdrawn as of July 25, 2003.

FOR FURTHER INFORMATION CONTACT: For further information concerning this withdrawal of direct final rule, please contact Ms. Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8568, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Jewell Grubbs to return your call. Questions may also be e-mailed to Ms. Jewell Grubbs at *Grubbs.jewell@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA published a Direct Final Rule on June 2, 2003, granting the delisting petition submitted by Bekaert Steel, Inc. (Bekaert) for an F006 waste water treatment sludge from electroplating operations, where Bekaert manufactured copper plated steel cord for the automobile tire industry. The rule would have become effective on August 1, 2003, without further notice, unless EPA received adverse comment by July 17, 2003. The direct final rule 45-day public comment period explained that if we received adverse comments, we would withdraw the relevant direct final action.

We received adverse comment and are therefore withdrawing the direct final rule approving Bekaert's delisting petition. Commentors argued that EPA could not issue a delisting petition based on another identical facility's data, and that the regulations specifically require the delisting to be based on site specific information. Therefore, for the petition to be complete Bekaert should submit at a minimum, three additional data points from the Dyersburg, Tennessee facility to support the initial delisting petition. The three additional data points must be collected in compliance with 40 CFR 260.22, and be sufficient to demonstrate the temporal and spatial variability of the petitioned waste. EPA shall review the data submitted and shall publish a proposed rule to provide public notice

on EPA's proposed decision and collect comments on the proposed decision.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 18, 2003.

Jewell Harper,

Acting Director, Waste Management Division.

[FR Doc. 03–19005 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411 and 489

[CMS–1475–FC]

RIN 0938–AM65

Medicare Program; Third Party Liability Insurance Regulations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period removes § 411.54(c)(2) and a portion of § 489.20(g) from our regulations. These regulations were held by a court to be inconsistent with the Medicare Secondary Payer provisions that are found in section 1862(b)(2)(a) of the Social Security Act. Specifically, the court held that § 411.54(c)(2) and a portion of § 489.20(g) are unenforceable to the extent that these regulations require providers and suppliers to only bill Medicare and prohibits them from billing a liability insurer or asserting or maintaining a lien against a beneficiary's liability insurance settlement during the ''promptly'' period.

DATES: *Effective date:* This final rule with comment period is effective on August 25, 2003.

Comment date: We will consider comments if we receive them at the appropriate address, as provided in the **ADDRESSES** section, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1475–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1475–FC, PO Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for us to receive mailed comments on time in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available if you wish to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Suzanne Ripley, (410) 786–0970.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are recorded and processed, generally beginning approximately 4 weeks after the publication of the document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

I. Background

Under section 1862(b)(2)(A) of the Social Security Act (the Act), Medicare payments may not be made for any item or service for which payment has been made or can reasonably be expected to be made ''promptly'' (as determined in accordance with our regulations) under a liability insurance policy. The regulations at § 411.54(c)(2) and a portion of § 489.20(g) require providers and suppliers (including physicians) to bill Medicare for Medicare covered services. These regulations also prohibit those providers and suppliers from billing a liability insurer or asserting or maintaining a lien against the beneficiary's insurance settlement, regardless of when the liability insurer is billed or when the lien is asserted. After the regulations at § 411.54(c)(2) and § 489.20(g) were published, but before the effective date, the American Hospital Association (AHA), filed a lawsuit on behalf of its member hospitals to prevent us from implementing these sections. (*See American Hospital Association (AHA)* v. *Sullivan*, 1990 WL 274639 (D.D.C. May 24, 1990).) During the litigation, the parties stipulated to allow providers to bill liability insurers or assert or maintain a lien against a beneficiary's insurance settlement.

The court ultimately held that this statutory provision (that prohibits Medicare from making payment where liability insurance that is expected to pay promptly exists) permits a provider to seek payment from insurance or assert or maintain a lien against the beneficiary's insurance settlement during the ''promptly'' period. Therefore, we were unable to implement § 411.54(c)(2) and the portion of § 489.20(g) that states, ''except when the primary payer is a liability insurer and except as provided in paragraph (j) of this section.'' The court took no action affecting existing special rules for Oregon. The court also did not address billing a liability insurer or asserting or maintaining a lien after the expiration of the ''promptly'' period. The *AHA* decision has not been appealed. Therefore, to the extent that § 411.54(c)(2) and a portion of § 489.20(g) are inconsistent with the court's decision, they are unenforceable.

In light of the *AHA* decision, we are continuing the policy which we stipulated during the *AHA* case with respect to all providers and suppliers (including physicians); that is, we are allowing them to bill liability insurers or assert or maintain liens on a beneficiary's liability insurance settlement rather than billing Medicare. The Commerce Clearing House, Inc. (CCH) published two policy memoranda that addressed the issue of billing a liability insurer or asserting or maintaining a lien against a beneficiary's liability insurance settlement, referring to the holding in the *AHA* case. (Medicare & Medicaid Guide (CCH) 45, 187 at 53, 508–53, 512 (1997). The first policy memorandum entitled, ''Provider and Supplier Billing When Medicare is Secondary Payer to Liability Insurance—Information'', is dated August 21, 1995. The second policy memorandum entitled '' Charges to Beneficiaries and Handling Improper Collections By Providers and Suppliers When Medicare is Secondary Payer to Liability Insurance—Action'', is dated March 12, 1996. These memoranda can

be obtained by calling the contact person listed in this final rule with comment period or by accessing the CMS Web site: *http://www.cms.hhs.gov*.

To date, we have not enforced § 411.54 (c)(2) or the portion of § 489.20(g) that is inconsistent with the court's decision. Because § 411.54(c)(2) was written without regard to the pre- and post ''promptly'' period, we are removing this section in its entirety, even though the *AHA* decision found it unenforceable only during the ''promptly'' period. This final rule with comment period does not establish lien rights that are not available to providers and suppliers (including physicians) under State law. The final rule with comment period does not alter the prohibition against double billing; that is, it does not allow a provider or supplier (including a physician) to bill Medicare and simultaneously bill the liability insurer or assert or maintain a lien against the beneficiary's liability insurance settlement.

II. Provisions of the Final Rule

The final rule with comment period removes § 411.54(c)(2) and revises paragraphs (c) and (d) of our regulations. It also removes the words ''except when the primary payer is a liability insurer and except as provided in paragraph (j) of this section'' from § 489.20(g).

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the OMB for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 411.54 Limitation on Charges When a Beneficiary Has Received a Liability Insurance Payment or Has a Claim Pending Against a Liability Insurer

Section 411.54(c) states that a hospital must, upon request, furnish to the beneficiary or his or her representative an itemized bill of the hospital's charges.

This requirement, which is subject to the PRA, is not being revised in this regulation. The burden associated with this requirement is currently captured under OMB control number 0938–0565, which is approved through November of 2005.

We have submitted a copy of this final rule with comment period to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following: Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attn.: Dawn Willinghan (Attn: CMS–1475–F), Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority, under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. The *AHA* decision holds that the Medicare Secondary Payer provisions permit a provider to seek payment from that insurance or assert or maintain a lien against the beneficiary's insurance settlement during the ''promptly'' period. To the extent that § 411.54(c)(2) and a portion of § 489.20(g) are inconsistent with the court's decision, they are unenforceable. Good cause exists to waive notice and comment because the agency's action to remove § 411.54(c)(2) and revise § 489.20(g) is compelled by the AHA decision.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule with comment period.

V. Regulatory Impact

We have examined the impacts of this final rule with comment period as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that the effect of this final rule on the economy and the Medicare program is negligible. Therefore, this final rule is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Because these regulations have been unenforceable since the AHA decision, the impact of this regulation is limited to the expected elimination of potential lawsuits that may be brought against hospitals by beneficiaries seeking to require hospitals to bill Medicare for the cost of their treatment. Since 1990 we have been aware of only several cases where beneficiaries have brought litigation against hospitals seeking State court orders requiring the hospitals to bill Medicare. The beneficiaries have based their cases on the published regulations. While we do not believe that many such suits have or will be filed, individual hospitals can spend substantial monies defending these types of lawsuits. Beneficiaries who bring these suits, only to lose based on the State court's reading of CMS' policy, also may be responsible for some attorneys' costs and may be responsible for fees for the hospital's attorneys in some cases. To the extent that this regulation clarifies CMS policy by eliminating unenforceable regulations, we believe that the number of lawsuits filed may decline.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. Because this regulation merely deletes these unenforceable provisions from our regulations, we have determined and we certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule or notice having the effect of a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this final rule will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule or notice having the effect of a rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule or notice having the effect of a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 411.54 is amended by revising paragraphs (c) and (d) to read as follows:

§ 411.54 Limitation on charges when a beneficiary has received a liability insurance payment or has a claim pending against a liability insurer.

* * * * *

(c) *Itemized bill.* A hospital must, upon request, furnish to the beneficiary or his or her representative an itemized bill of the hospital's charges.

(d) *Exception—(1) Prepaid health plans.* If the services were furnished through an organization that has a contact under section 1876 of the Act (that is, an HMO or CMP), or through an organization that is paid under section 1833(a)(1)(A) of the Act (that is, through an HCPP) the rules of § 417.528 of this chapter apply.

(2) *Special rules for Oregon.* For the State of Oregon, because of a court decision, and in the absence of a reversal on appeal or a statutory clarification overturning the decision, there are the following special rules:

(i) The provider or supplier may elect to bill a liability insurer or place a lien against the beneficiary's liability settlement for Medicare covered services, rather than bill only Medicare for Medicare covered services, if the liability insurer pays within 120 days after the earlier of the following dates:

(A) The date the provider or supplier files a claim with the insurer or places a lien against a potential liability settlement.

(B) The date the services were provided or, in the case of inpatient hospital services, the date of discharge.

(ii) If the liability insurer does not pay within the 120-day period, the provider or supplier:

(A) Must withdraw its claim with the liability insurer and/or withdraw its lien against a potential liability settlement.

(B) May only bill Medicare for Medicare covered services.

(C) May bill the beneficiary only for applicable Medicare deductible and co-insurance amounts plus the amount of any charges that may be made to a beneficiary under 413.35 of this chapter (when cost limits are applied to these services) or under 489.32 of this chapter (when services are partially covered).

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 489.20 is amended by revising paragraph (g) to read as follows:

§ 489.20 Basic commitments.

* * * * *

(g) To bill other primary payers before Medicare.

* * * * *

Authority: Section 1862(b)(2)(A) of the Social Security Act (42 U.S.C. 1395Y)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 6, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 30, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–18509 Filed 7–17–03; 10:06 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 101

[ET Docket No. 98–206; RM–9147; RM–9245; FCC 03–97]

Order To Deny Petitions for Reconsideration of MVDDS Technical and Licensing Rules in the 12 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission affirms the technical rules and procedures dealing with sharing of

spectrum between Multichannel Video Distribution and Data Service (MVDDS) and Direct Broadcast Satellite (DBS) and Non-geostationary (NGSO) fixed satellite service (FSS) in the 12.2–12.7 GHz band that the Commission adopted in the *Memorandum Opinion and Order and Second Report and Order (Second R&O).* The Commission also affirms the dismissal of the pending license applications to provide terrestrial service in the 12.2–12.7 GHz band. The Commission takes these actions in the course of addressing the petitions for reconsideration that were filed in response to the *Second R&O* in this proceeding. The Commission amends or clarifies certain rule sections, but otherwise denies the petitions for reconsideration. The adoption of the amended rules and the disposition of the petitions for reconsideration will facilitate initiation of MVDDS in the 12.2–12.7 GHz band.

DATES: Effective August 25, 2003, except § 25.146 which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the new and/or modified information collection(s) must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, Office of Engineering and Technology, (202) 418–2290, TTY (202) 418–2989, e-mail: *gthayer@fcc.gov;* Jennifer Burton, Wireless Telecommunications Bureau, (202) 418–7581, TTY (202) 418–7581, e-mail *jburton@fcc.gov.* For additional information concerning the information collections contained in this document, contact Les Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Memorandum Opinion and Order,* ET Docket No. 98–206, FCC 03–97, adopted April 22, 2003, and released April 29, 2003. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov.* It 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 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. File comments with the Office of the Secretary, a copy of any comments on the information collection contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov,* and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim A.Johnson@omb.eop.gov.*

Summary of the Fourth Memorandum Opinion and Order

1. *DBS Issues.* In this *Fourth Memorandum Opinion and Order (Fourth MO&O),* the Commission affirms that the four regional EPFD limits and the 14 dBm EIRP limit adopted for MVDDS operation constitute objective standards that will prevent harmful interference to DBS as defined by § 2.1 of the Commission's rules and will provide certainty that, along with other reasonable procedures that were adopted, can be discerned and relied upon by DBS operators. The Commission declines to adopt higher EIRP and EPFD limits for rural areas because the adopted standards are sufficiently conservative to protect DBS in general application while preserving the flexibility for each MVDDS provider to make its own business decisions about what type of transmission system best suits its needs.

2. The Commission affirms that the rules and procedures adopted in the Second R&O, (ET Docket No. 98–206), 67 FR 43031, June 26, 2002 comply with the legislative history and provisions of the *Rural Local Broadcast Signal Act (RLBSA)* and the *Satellite Home Viewer Protection Act (SHVIA)* [1] that prohibit harmful interference to DBS. The Commission finds that, under the powers granted by the Communications Act, it was proper to define interference standards in terms of EPFD and EIRP limits on MVDDS that it concluded would prevent harmful interference to DBS. The Commission further finds that the adoption of these standards complies with the *Administrative Procedure Act (APA)* because they were developed through the usual notice and comment rule making process.

3. The Commission affirms that the rules and procedures adopted in the *Second R&O* do not violate other Commission rules or international radio regulations, and are consistent with the regulatory history of DBS and FS allocations in the 12 GHz band because MVDDS, unlike previous FS operations, is designed to coexist with DBS and because the adopted rules and procedures will prevent harmful interference to DBS.

4. The Commission affirms the self-mitigation responsibilities adopted in the *Second R&O* for new DBS receivers and finds that they are consistent with the primary status of DBS because, due to their modest, effective and infrequently required nature, they strike an appropriate public interest balance that will result in more efficient spectrum utilization and will facilitate compliance with the non-harmful interference provisions of the statutes while allowing initiation of a new service.

5. The Commission finds that adequate notice was given for the computer model used to derive the EPFD limits on MVDDS, and that the various inputs for this model—including using a 10% increase in DBS unavailability as a starting point rather than as a hard limit, the ''double averaging'' of EPFDs, and the decision not to include ''wing satellites''—are reasonable and supported by the evidence of record particularly in light of the deficiencies or impracticalities involved in other models that were considered.

6. The Commission affirms that the ''safety valve'' rule, as written, is sufficiently specific and is a useful tool to ensure that MVDDS operations fully protect DBS. Consistent with past practice, the Commission notes that in many cases it has provided opportunities for licensees to petition for adjustments to rules (outside the waiver process) without specifying in exacting detail how such a filing should be made.

7. The Commission affirms its decision to require that MVDDS conduct a site survey as specified in § 101.1440(b) of the Commission's rules and finds that, in conjunction with other adopted procedures, it has provided sufficient detail and specificity—similar in nature to the broad good-faith-based guidelines that have proven to be both workable and beneficial in other proceedings—that the Commission concludes will protect DBS customers in this proceeding.

[1] *Satellite Home Viewer Improvement Act Of 1999 (SHVIA)/Rural Local Broadcast Signal Act (RLBSA). See* Public Law 106–113, 113 STAT. 1501, 1501A–544 TO 101A–545, Act of Nov. 29, 1999 (enacting S.1948, including the SHVIA and RLBSA. Titles I and II of the Intellectual Property and Communications Omnibus Reform Act of 1999).

8. The Commission affirms the 45-day DBS response time specified in § 101.1440(d)(2) of the Commission's rules, because it provides a reasonable balance between the needs of DBS licensees to ensure protection of their customers before MVDDS begins operation while affording MVDDS licensees the ability to initiate service on a reasonably expeditious basis. Further, the Commission concludes that DBS customers are protected once MVDDS begins operation because the MVDDS provider must correct interference or cease operation if it causes harmful interference to or exceeds the permitted EPFD limits to a DBS customer of record.

9. The Commission amends § 101.1440(e) of the rules to clarify the responsibility of DBS licensees in regard to future DBS receive antenna installations. The Commission recognizes that § 101.1440(e) of the rules adopted in the *Second R&O* appears to require a DBS licensee to oversee all future DBS receive antenna installations, which they currently may not do. It was not intent of the Commission to alter these arrangements. Rather, the Commission only expects a DBS licensee to provide information that they deem necessary so that other entities installing DBS receive antennas may take into account the presence of MVDDS operations. Typically, this information could be conveyed with installation guidelines for DBS equipment.

10. The Commission amends § 101.1440(d)(2) of the rules to allow DBS providers to identify—instead of all DBS customers of record—only those new DBS customers of record that they believe would receive harmful interference from the proposed MVDDS transmitter during the 30-day period specified in the rule. The Commission takes this action to address petitioners' concern regarding the possible uses to which other parties could put such information.

11. The Commission declines to adopt a methodology for measuring EPFD values in the field because any measurement techniques that might be described would artificially limit the flexibility of the licensees to perform these measurements, and could seemingly prohibit the use of a technique that is satisfactory for this purpose.

12. Concerning dispute resolution procedures, the Commission clarifies that an MVDDS transmitter can be turned on after expiration of the 90-day period specified in § 101.1440 of the rules. The Commission believes that the adopted EPFD contour methodology will reduce disputes to a minimum, and this time frame will ensure that licensees participate in conflict resolution in good faith.

13. The Commission affirms its decision to dismiss the pending applications of Broadwave Network, LLC (Northpoint), PDC Broadband Corporation (Pegasus), and Satellite Receivers, Ltd. (SRL) because the original *Ku-band Cut-Off Notice* did not provide adequate notice for all entities interested in filing applications for licenses to provide terrestrial services in the 12 GHz band. The Commission further finds that its decision to dismiss the pending applications is consistent with the *LOCAL TV Act* because there is no evidence that Congress explicitly ordered the Commission to limit terrestrial applications in this band to those already on file and validated by independent testing.

14. The Commission finds that the rules and procedures adopted in the Second R&O do not violate the *Administrative Procedure Act* (*APA*) because the decisions were fully explained and rationally based upon all the information in the record and, therefore, are not arbitrary, capricious or contrary to law.

15. The Commission finds that the adoption of the Second R&O did not violate the provisions of the *Government in the Sunshine Act (Sunshine Act)* because the item was not adopted at an open meeting as defined by the Act and that, therefore, the *Sunshine Act* is not applicable.

16. The Commission dismisses, as repetitious, the petitions for reconsideration to the extent that they challenge the underlying decision in the *First Report and Order,* 66 FR 10601, February 16, 2001, and *Further Notice of Proposed Rulemaking,* 66 FR 7607, January 24, 2001, in this proceeding to authorize MVDDS in the 12 GHz band, and to the extent they challenge the determination made in the memorandum opinion and order portion of the *Second R&O* that MVDDS is authorized on a primary, rather than secondary, non-harmful interference basis as to DBS.

17. The Commission denies as not ripe, because it relies upon purely speculative conjecture, a petition for reconsideration that asserts that DBS providers might at some time in the future suffer a ''regulatory taking'' as the result of being required to increase satellite power to overcome MVDDS interference.

18. *NGSO FSS Issues.* The Commission affirms the -135 dBW/m^2/4kHz PFD limit at 3 km, and the 10 km separation rules for MVDDS because they provide reasonable interference protection to NGSO FSS and strike a reasonable balance between affording the first in service provider with easier and better use of the band while not unduly precluding deployment by the later-in provider. The Commission affirms its finding that an alternate NGSO FSS protection scheme proposed by one petitioner is unduly complex and provides no benefit over the adopted limits.

19. The Commission amends § 25.139(a) to reflect that the information NGSO FSS licensees are required to provide MVDDS should be construed narrowly and that only information necessary to achieve the required 10 km separation under § 25.139(b) needs to be provided.

20. The Commission clarifies the NGSO FSS low-angle PFD limit of § 25.208(o) for MVDDS protection. The limit will be treated in a manner consistent with the rules for NGSO FSS and BSS sharing where validation (*i.e.*, ''hard limit'') and operational (*i.e.*, can be exceeded so long as they are not exceeded into an operational receiver) EPFD limits were adopted. The low-angle PFD limit adopted by the Commission in the *Second R&O* for MVDDS protection is therefore intended to be an operational limit which means that it does not need to be met in all cases so long as it is not exceeded into an operational MVDDS receiver. To clarify this intent, the Commission modifies § 25.146 to add paragraph (g) to specify that the required technical showing shall demonstrate the NGSO FSS system is *capable* of meeting the limits specified in § 25.208(o). The Commission also amends § 25.208(o) to require that the specified power flux density shall not be exceeded into an *operational* MVDDS receiver.

21. The Commission clarifies the MVDDS emission mask by amending the footnote immediately after the definition of ''B'' in § 101.111(a)(2)(i) to add the proviso that the emission mask only applies at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidths within the band.

22. *Paperwork Reduction Act Analysis:* This Fourth Memorandum Opinion and Order contains a new or modified information collections. This Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collections contained in the Fourth Memorandum Opinion and Order, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13. Public and agency comments are due September 23, 2003.

Final Regulatory Flexibility Certification

23. The Regulatory Flexibility Act of 1980, as amended (RFA),[2] requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [3] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [4] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[5] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

24. Under the amended rules adopted in the Fourth Memorandum Opinion and Order, DBS licensees are required to provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed equivalent power flux density (EPFD) limits may be exceeded. This requirement is less burdensome than the rule adopted in the *Second R&O*[7] that required disclosure of all DBS customer locations under similar circumstances. Furthermore, under the amended rules, DBS licensees are required to provide merely the information deemed necessary by DBS licensees to enable others to take into account the presence of MVDDS transmitters. This requirement is less burdensome than the rule adopted in the *Second R&O* that imposed direct responsibility on DBS licensees for proper siting of future DBS receivers to take into account the presence of MVDDS.

25. Licensees of NGSO FSS systems are required to submit, ninety days prior to the initiation of service to the public, a technical showing that demonstrates that they are capable of meeting low-angle radiation limits specified in § 25.208(o) of the Commission's rules for the 12.2–12.7 GHz band. Finally, licensees of NGSO FSS systems are required under the amended rules to ensure that the PFD limit is not exceeded into an operational MVDDS receiver. Taken together, these requirements are less burdensome than those adopted in the *Second R&O* because they merely require a showing that the NGSO FSS system is *capable* of meeting (instead of demonstrating the system has factually met) the specified technical limits, and because the PFD limit need only be met into *operational*, rather than *all*, MVDDS receivers.

26. These changes are deregulatory because they lessen compliance requirements. Therefore, we certify that the requirements of the Fourth Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

27. The Commission will send a copy of the Fourth Memorandum Opinion and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[8] In addition, the Fourth Memorandum Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA.[9]

Ordering Clauses

28. Pursuant to sections 4(i), 302, 303(e) 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, the petitions for reconsideration filed by Pegasus Broadband Corporation, MDS America, Inc., EchoStar Satellite Corporation and DIRECTV, Inc., SkyBridge L.L.C., SES Americom, Inc., and Satellite Broadcasting and Communications Association *Are denied.*

29. Parts 25 and 101 of the Commission's rules are amended as specified in the rule changes, effective August 25, 2003, except § 25.146 which contains information collection requirements which have not been approved by the Office of Management and Budget (''OMB''). The Commission will publish a document in the **Federal Register** announcing the effective date. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g) 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

30. It is further ordered that the proceeding in ET Docket No. 98–206 is terminated.

List of Subjects

47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Securities, and Telecommunications.

47 CFR Part 101

Communications equipment, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 25 and 101 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended. 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.139 is amended by revising paragraph (a) to read as follows:

§ 25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.

(a) NGSO FSS licensees shall maintain a subscriber database in a format that can be readily shared with MVDDS licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in § 101.129 of this chapter. This information shall not be used for purposes other than set forth in § 101.129 of this chapter. Only sufficient information to determine compliance with § 101.129 of this chapter is required.

* * * * *

[2] The RFA, *see* 5 U.S.C. 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[3] 5 U.S.C. 605(b).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[6] 15 U.S.C. 632.

[7] *Second R&O,* 17 FCC Rcd 9614 (2002).

[8] *See* 5 U.S.C. 801(a)(1)(A).

[9] *See* 5 U.S.C. 605(b).

■ 3. Section 25.146 is amended by redesignating paragraphs (g) through (m) as paragraphs (h) through (n) and by adding a new paragraph (g) to read as follows.

§ 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

* * * * *

(g) *Operational power flux density, space-to-Earth direction, limits.* Ninety days prior to the initiation of service to the public, the NGSO FSS system licensee shall submit a technical showing for the NGSO FSS system in the band 12.2–12.7 GHz. The technical information shall demonstrate that the NGSO FSS system is capable of meeting the limits as specified in § 25.208(o). Licensees may not provide service to the public if they fail to demonstrate compliance with the PFD limits.

* * * * *

■ 4. In § 25.208, paragraph (n), which was added at 67 FR 43037, June 26, 2002, is correctly designated as paragraph (o) and revised to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(o) In the band 12.2–12.7 GHz, for NGSO FSS space stations, the specified low-angle power flux-density at the Earth's surface produced by emissions from a space station shall not be exceeded into an operational MVDDS receiver:

(1) 158 dB(W/m^2) in any 4 kHz band for angles of arrival between 0 and 2 degrees above the horizontal plane; and

(2) 158 + 3.33(δ − 2) dB(W/m^2) in any 4 kHz band for angles of arrival (δ) (in degrees) between 2 and 5 degrees above the horizontal plane.

Note to paragraph (o):

These limits relate to the power flux density, which would be obtained under assumed free-space propagation conditions.

PART 101—FIXED MICROWAVE SERVICES

■ 5. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 6. Section 101.111 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 101.111 Emission limitations.

(a) * * *

(2) * * *

(i) For operating frequencies below 15 GHz, in any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8(P - 50) + 10 \text{ Log}_{10} B.$

(Attenuation greater than 80 decibels is not required.)

where:

A = Attenuation (in decibels) below the mean output power level.

P = Percent removed from the carrier frequency.

B = Authorized bandwidth in MHz. MVDDS operations in the 12.2–12.7 GHz band shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. MVDDS operations in the 12.2–12.7 GHz bands shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. The emission mask limitation shall only apply at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidth within the band.

* * * * *

■ 8. Section 101.1440 is amended by revising paragraph (d)(2) and (e) to read as follows.

§ 101.1440 MVDDS protection of DBS.

* * * * *

(d) * * *

(2) No later than forty-five days after receipt of the MVDDS system information in paragraph (d)(1) of this section, the DBS licensee(s) shall provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. In addition, the DBS licensee(s) could indicate agreement with the MVDDS licensee's technical assessment, or identify DBS customer locations that the MVDDS licensee failed to consider or DBS customer locations where they believe the MVDDS licensee erred in its analysis and could exceed the prescribed EPFD limit.

* * * * *

(e) Beginning thirty days after the DBS licensees are notified of a potential MVDDS site in paragraph (d)(1) of this section, the DBS licensees are responsible for providing information they deem necessary for those entities who install all future DBS receive antennas on its system to take into account the presence of MVDDS operations so that these DBS receive antennas can be located in such a way as to avoid the MVDDS signal. These later installed DBS receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

* * * * *

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15676]

RIN 2105–AD14

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Drug and Alcohol Management Information System Reporting

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ODAPC) is revising the Management Information System (MIS) forms currently used within five U.S. Department of Transportation (DOT) agencies and the United States Coast Guard (USCG) for submission of annual drug and alcohol program data. The DOT agencies are: Federal Motor Carrier Safety Administration (FMCSA); Federal Aviation Administration (FAA); Federal Transit Administration (FTA); Federal Railroad Administration (FRA); and Research and Special Programs Administration (RSPA). The Department is streamlining the annual reporting of drug and alcohol program data to DOT agencies through use of a one-page MIS data collection form. The Department is standardizing across the DOT agencies the information collected and reducing the amount of data reported by transportation employers. If a DOT agency requires supplemental data, the DOT agency will address those issues separately.

DATES: Effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Drug and Alcohol Policy Advisor at 202–366–3784 (voice) 202–366–3897 (fax) or at: *jim.swart@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

Five DOT agencies and the USCG collect drug and alcohol program data from their regulated employers on an

annual basis. Employers compile this data on MIS forms and each form is DOT-agency specific. In fact, twenty-one MIS data collection forms will be replaced within the DOT agencies by the new single-format form. The Department believes that data collection and entry will be greatly simplified for transportation employers and the Department if a single form is utilized throughout the transportation industries and the DOT agencies.

All drug and alcohol testing conducted under DOT authority uses a standard form for drug testing—Federal Drug Testing Custody and Control Form—and a standard form for alcohol testing—DOT Alcohol Testing Form. In essence, use of standard testing forms serves to limit MIS reporting to a finite number of data elements. Therefore, a core set of data elements will make up the new MIS form which all transportation employers will complete, as appropriate, for their companies and the DOT agencies regulating them.

This MIS form will simplify and streamline data recording for transportation employers and will require employers to enter less data. In addition, because the form contains fewer data elements and is on a one-page format, it can be more easily entered and processed via electronically-based systems. As an added benefit, there is a single set of MIS instructions for all transportation employers, regardless of DOT agency.

However, not every DOT agency expects information for all potential data elements (*e.g.*, RSPA does not conduct random alcohol testing), and some data elements may be collected through some means other than MIS (*e.g.*, USCG receives alcohol data immediately following each post-accident testing event). The form's instructions highlight some of those peculiar testing differences, and companies not required to conduct or report certain types of tests will simply leave those sections blank or may enter zeros. For instance, because USCG wants no alcohol testing data on the MIS form, USCG-regulated employers will leave blank (or enter zeros in) Section IV of the form. In addition, when no testing was done or no results were received for particular data elements, employers may leave those items blank or insert zeros.

The Department issued a notice of proposed rulemaking (NPRM) on September 30, 2002 (67 FR 61306), asking for comments and suggestions for changes to the MIS form and process. In response to the NPRM, we received a modest amount of comments from a dozen or so individuals, groups, and associations. The final rule responds to all those comments. The final rule also makes significant modifications to the previous DOT agency MIS forms.

Additional Background Issue

In the NPRM we said, ''On June 6, 2002, President Bush announced his proposal to create a Cabinet-level homeland security department. Inside this new department, the President proposes to put several agencies, including the USCG. The President urged Congress to pass legislation to create the new Department of Homeland Security. This process may take some time. As a result, if you have USCG ties and MIS interests, please submit your comments to this NPRM. We will consider congressional and presidential action regarding the USCG and homeland security in the final rule.''

The Department of Homeland Security (DHS) has been established and the USCG's being part of that cabinet agency is reality. However, the USCG intends to keep 49 CFR part 40 as an incorporated part of its regulated industry testing rules—46 CFR part 16. Consequently, the USCG intends to follow part 40 regulations applicable (*e.g.*, part 40 alcohol rules do not apply) to the marine industry until such time as resources permit them to create their own rules, should that become necessary in the future. The USCG intends to rely upon 49 CFR part 40 for testing procedures, guidance, and interpretations. They also intend to remain a part of the MIS form, its process, and its related regulation section in part 40. Therefore, USCG-regulated employers will continue to report on this MIS form until further notice.

ODAPC desires to support the USCG efforts to facilitate a seamless transition from DOT to DHS. In this light, we will support the USCG's use of 49 CFR part 40 in their regulated industry testing program. [We view USCG's use of part 40 as being similar to DOT's required incorporation of Department of Health and Human Services (HHS) laboratory regulations and guidance into part 40.] In this light, the MIS regulation, form, and instructions will continue to reference the USCG as a DOT agency even though it became part of DHS on March 1, 2003.

Effective Dates

The Department has decided that use of the new MIS form will be required for employer MIS submissions in CY 2004 documenting CY 2003 data. Therefore, employers must immediately adopt provisions in the rule which will permit them to start, as appropriate, collection of the required data and which establish how companies are to determine the number of employees upon which 2003 random testing is based.

Discussion of Significant Comments to the Docket

Comment: The vast majority of commenters supported the Department's decision to streamline and simplify the various MIS forms currently in use into one form that will be used across all DOT agencies. Most expressed the belief that doing so will enhance accuracy of data being reported and the efficiency of those employers and service agents who will be tasked with providing the reports. A few commenters suggested that the new form will also be more easily processed through electronic means (when those are up and running) than would the variety of past MIS iterations.

Two commenters believed the new form did not effectively address the needs of data collection. One of these commenters expressed the belief that much more information needed to be collected and needed to be collected on a more frequent than once per year basis. The other commenter indicated that use of one specific DOT agency's MIS forms should not be changed because those forms best fit, the commenter asserts, the needs of a particular industry which the commenter represents (and because companies do not wish to change established reporting programs which are geared to provide the information required on current forms).

DOT Response: We agree with the preponderance of commenters who supported use of a single form across all modes of transportation. We agree with the majority of commenters who supported use of a trimmed-down version of the form. We agree with commenters who believed the new form readily lends itself to electronic transfer of items and data. In this light, it is important to note that the new form represents an all important first step in the Department's desire to have this form on-line and to permit electronic transmission of data. The fact that one form will be used throughout the transportation industry makes the difficult task of designing the system much simpler (to say nothing of our being able to obtain accurate data in consistent fields across all DOT agencies).

The Department, after reaching a self-imposed deadline date for the publication of the NPRM, did not intend for the new form to be used to collect 2002 MIS information. To do so would have meant a change in the way

companies that had already collected 2002 data would have had to download that information. In addition, many companies had not been collecting vital data regarding refusals to test. Therefore, use of the new form will be required in CY 2004 for collecting data representing CY 2003 testing.

During 2003, the Federal Transit Administration (FTA) has agreed to field-test an electronic data collection system using data elements of the new form. The FTA will select transit systems for reporting MIS data as part of this field-test. FTA's Volpe Center resources will coordinate the data collection. Through field-testing we can expose the Volpe-developed system software to a wide range of equipment and real-world usage. This field test will be accomplished with an eye toward full implementation across all DOT agencies as soon as possible. We believe the revised MIS form and its data format represent the best way to accomplish the Department's ultimate goal of having full automation for MIS submissions. Early demonstrations of FTA's system have shown the design to be very user-friendly and uncomplicated for the input required data.

Comment: Several commenters expressed the concern that employers could believe the data requirements no longer reflected on MIS forms are being de-emphasized by the DOT agencies. Most of these commenters wished us to reiterate the importance of training information that will no longer be asked for on the MIS form.

DOT Response: As we stated in the NPRM, the items for which we are no longer asking are items that DOT agencies can obtain in a variety of other ways and in other venues and formats. It is worth reiterating that the vast majority of items removed from the MIS form remain important. Employers would be remiss, to say nothing about being in violation of part 40 and DOT agency regulations, if they chose not to obtain, maintain, and furnish information required by regulations. Employers and service agents will be in clear violation of regulations and subject to sanctions if the DOT agency requirements (*e.g.*, for supervisory training, for recordkeeping) are now ignored simply because the data generated by those requirements are no longer being recorded on the MIS form.

Comment: The bulk of commenters supported how the Department proposed to count the number of covered employees (*i.e.*, employees subject to testing because they perform DOT safety-sensitive duties) using the averaging formula. Some commenters, while supporting the averaging formula method, expressed concern for companies that make random selections on a daily or weekly basis (as opposed to those selecting monthly or quarterly). Only one commenter expressed the desire to use a number determined at the start of the year believing it simpler than factoring-in employee census fluctuations. This commenter believed that doing so would be better than having an employer determine the average number of employees at year's end—which was not an idea proposed by the Department in the NPRM. In addition, this commenter indicated that employers represented by the commenter did not know how many safety-sensitive employees they actually employ throughout the year.

DOT Response: The Department believes the calculation of the employee average will be the best way for employers to determine the number of covered employees eligible for DOT testing throughout the year. This process will more readily enable employers to take into account employment of seasonal workers; periods of downsizing; and business start-ups and other increases in employee numbers. To fix the number of covered employees at the start of a year does not take those important factors into consideration. For some employers, establishing the number at the start of the year may lead to their conducting much more random testing than required, and for others, far too little random testing.

Companies that do not know how many employees they employ and release from employment; do not know how many eligible employees are in each random selection pool; and do not know if eligible employees are placed into and taken out of random selection pools have problems irrespective of how the MIS form is completed.

In any case, the Department believes the best way for the random testing pools to be kept current and for the random testing rate to reflect the number of employees actually performing safety sensitive duties is the proposed averaging formula, and we have adopted it in this regulation. It is imperative that companies not wait until the end of the year to make this calculation. Companies must place all covered employees into the pool, know how many are in the pool, and select and test the appropriate percentages.

While we believe that companies conducting their random testing draws on a daily or weekly basis have computer systems sophisticated enough to factor the average on a daily or weekly basis, the Department will not require those companies to do so. However, those companies conducting random draws more frequently than monthly (*e.g.*, daily, weekly, bi-weekly) will not be required to do the averaging more than once each month. And, for example, companies selecting monthly, must calculate monthly; and companies selecting quarterly, must calculate quarterly.

Comment: One commenter believed the requirement to capture ''refusal to test'' data would be too complex for employers. This commenter also stated that counting the number of cancelled tests would also add a burden to employers, although the commenter wished to have cancelled tests counted toward satisfaction of the random testing rate. In short, this commenter did not favor changes to the old single-industry-specific forms.

DOT Response: The Department believes that the testing panorama has changed considerably since the inception of the DOT testing program. Other program forms, such as the Breath Alcohol Testing Form and the Federal Drug Testing Custody and Control Form, have changed to reflect program changes. We believe it is important that the MIS form transform accordingly. At one time the Department did not envision that specific reasons for refusals would become important enough to track. However, a troubling industry has risen whose primary goal is to ''beat the drug test.'' Adulterated and substituted test results have increased considerably: when we speak of refusals, no longer are we simply talking about employees failing to appear for tests. Times change and this refusal delineation is now important for the Department, the DOT agencies, and employers to have.

As proposed in the NPRM, we have determined that refusals to test should count as a test result—one that goes toward satisfaction of a company's random testing rate. However, we do not believe that cancelled tests should count toward satisfaction of the rate. We continue to support part 40's contention that a cancelled test does not count toward compliance with DOT's testing requirements.

Again, we believe a single MIS format is the most appropriate approach. We believe that the many items we no longer desire to capture on the form more than offset the few new collection requirements for refusals and cancellations.

Comment: Two commenters believed the collection of data on separate sheets for each employee category would present too much work for those charged with completing the form. One commenter supported the one-page

concept while recognizing that some companies may have to enter data on additional sheets.

DOT Response: The Department gave a lot of thought to this issue, but did not see a valid way around separate pages for different employee categories, at least in the short term. Again, it is important to note that the Department views the use of this standard format, one-page MIS form to be a logical first step in providing an automated system for future MIS data entry. A ''must'' for the automated system will be the ability of the employer to view entry options only for eligible categories of employees. For instance, an employer entering MIS data online for the FTA will see only employee categories corresponding to the FTA rules. For an employer entering MIS data for the FAA, only those FAA employee categories will appear.

Interestingly, even if an employer has multiple employee categories, the amount of information collected equates to far less than if the employer used the old forms. There is no more actual work involved in entering the employee testing data even if using separate sheets. In fact, our test runs of the form (*e.g.*, to obtain industry estimates on the amount of time to fully complete the form) with companies having multiple employee categories were met with positive feedback. From those estimates, we concluded that completion of the form—even with multiple sheets—will take between 45 minutes and 1.5 hours. For the old MIS forms, estimates showed that the ''EZ'' forms took between 30 minutes and 1 hour to complete; and the long forms took 2.5 hours each (alcohol and drug) to complete. Again, we hold that the time savings is substantial using the new form rather than the multitude of old forms.

Comment: Two commenters asked us to clarify MIS requirements for companies reporting MIS data to more than one DOT agency—companies that, for instance, may have full-time drivers and full-time pipeline workers. In addition, they asked us to resolve confusion over how to record testing data for employees who perform duties that are regulated by more than one DOT agency—for example, a company's employees drive trucks sometimes and perform safety-sensitive railroad duties at other times.

DOT response: In its first paragraph, the NPRM's MIS instruction form provided guidance for companies regulated by more than one DOT agency. It said, ''If you are preparing reports for more than one DOT Operating Administration (OA), then you must submit OA-specific forms.'' We have maintained that text requirement intact. Therefore, if a company has drivers and pipeline workers covered under FMCSA and RSPA regulations respectively, and the company is asked by FMCSA and by RSPA to submit MIS data, the company should send an MIS report on its drivers to the FMCSA and an MIS report on its pipeline workers to RSPA.

The second scenario the commenters brought up, how to record MIS data for employees who perform cross-modal safety sensitive duties where an employee performs duties regulated by two or more DOT agencies (*e.g.*, the employee is a truck driver and a pipeline maintenance worker), is more complex. For a number of years, DOT agency rules have stipulated that a covered employee, subject to testing under more than one DOT agency rule for the same employer, would be subject to random testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's safety-sensitive duties.

Further complicating the issue becomes the fact that some DOT agencies (*i.e.*, RSPA and USCG) do not authorize random alcohol testing for employees. So while an employee who drives a truck and performs pipeline maintenance for a company may carry out more than 50% of his or her duties under RSPA rules and be in a RSPA random pool for drug testing, that employee must still be in an FMCSA pool for random alcohol testing. Or, the company can choose to place all these employees in the same random drug testing pool if they test at or above the highest random rates established by the DOT agency under whose jurisdiction they fall.

The Department is settling the issue by stating that for purposes of the MIS form, employees covered under more than one DOT agency rule need only be reported on the MIS form for the DOT agency under which they are randomly tested.

For example, an employee conducting 51% of her safety-sensitive work under FMCSA rules will be randomly tested under those rules rather than under the rules of another DOT agency under which she performs the other 49% of her DOT safety sensitive duties. For MIS purposes, therefore, she will be counted and her tests reported only under the MIS submission to the FMCSA. If 49% of her duties are under FTA, for instance, she will not appear on the FTA MIS submission even though she would continue to be eligible for testing under the FTA rule for post accident and reasonable suspicion, and perhaps for return-to-duty and follow-up testing. Employers may have to explain her testing data to FMCSA and FTA agency representatives during an inspection or audit.

Additional Discussion of Rule

The ODAPC and the DOT agencies have revised the MIS reporting requirements to standardize the collection of data for the agencies. The proposed rulemaking will impose a few new requirements for data collection; specifically, data related to information associated with the revised (65 FR 122, June 23, 2000) Federal Drug Testing Custody and Control Form. However, the overall amount of required data is less than that required currently. The Department has also placed the MIS form and instructions for completing it into part 40. The forms and instructions will be removed from all DOT agency regulations.

As stated earlier, many data elements are no longer part of the MIS form. DOT agencies have decided that some information items required on previous MIS forms are available in other formats or are items obtainable during inspections, reviews and audits. The following represents a listing for each DOT agency of most of the data elements we are eliminating from reporting on the MIS form:

FMCSA

1. Number of persons denied a position following a positive drug test.
2. Number of employees returned to duty following a refusal or positive drug test.
3. Supervisor initial drug training data.
4. Number of employees denied a position following an alcohol test of 0.04 or greater.
5. Number of employees returned to duty after engaging in alcohol misuse.
6. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
7. Actions taken for alcohol violations other than alcohol testing.
8. Supervisor initial alcohol training data.

FAA

1. Number of employees returned to duty after having failed or refused a drug test.
2. Actions taken for drug test refusals.
3. Number of persons denied employment for a positive drug test.
4. Actions taken for positive drug results.
5. Employee initial drug training data.
6. Supervisor initial drug training data.
7. Supervisor recurrent drug training data.
8. Number of persons denied a position for an alcohol test 0.04 or greater.
9. Number of employees returned to duty after engaging in alcohol misuse.

10. Actions taken for alcohol regulation violations.
11. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
12. Number of other violations of the alcohol regulation.
13. Actions taken for refusals to take an alcohol test.
14. Supervisor alcohol training data.

FTA

1. Number of persons denied a position for alcohol results 0.04 or greater.
2. Number of accidents (noted as fatal and non-fatal) with alcohol results 0.04 or greater.
3. Number of fatalities from accidents resulting in alcohol results 0.04 or greater.
4. Number of employees returned to duty following an alcohol violation.
5. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
6. Actions taken for other alcohol rule violations.
7. Supervisor alcohol training data.
8. Number of persons denied a position for positive drug test results.
9. Number of accidents (noted as fatal and non-fatal) with positive drug test results.
10. Number of fatalities from accidents resulting in positive drug tests results.
11. Number of persons returned to duty following a positive drug test or refusal result.
12. Employee drug education data.
13. Supervisor drug training data.
14. Funding source information.

FRA

1. Number of applicants/transfers denied employment/transfer for a positive drug test.
2. Number of employees returned to duty after having failed or refused a drug test.
3. Detailed breakouts of for-cause drug and alcohol testing.
4. Non-qualifying accident drug testing data.
5. Supervisor drug training data.
6. Number of applicants/transfers denied employment/transfer for alcohol results 0.04 or greater.
7. Number of employees returned to duty after engaging in alcohol misuse.
8. Supervisor alcohol training data.

USCG

1. Number of persons denied a position for a positive drug test.
2. Number of employees returned to duty following a drug violation.
3. Employee drug and alcohol training data.
4. Supervisor drug and alcohol training data.
5. Post-accident alcohol testing data.
6. Reasonable cause alcohol testing data.

RSPA

1. Number of employees returned to duty after engaging in alcohol misuse.
2. Actions taken for alcohol test results equal to or greater than 0.04.
3. Number of other alcohol rule violations and actions taken for them.
4. Actions taken for alcohol test refusals.
5. Supervisor initial alcohol training data.
6. Number of persons denied a position following a positive drug test.
7. Number of employees returned to duty following a positive or refusal drug test.
8. Actions taken for positive drug tests.
9. Actions taken for drug test refusals.
10. Supervisor initial drug training data.

The Department will also count collections differently than under the old MIS regimen. Under the old MIS counting method a drug collection was considered to be a testing event that resulted in a negative, positive, or cancellation. Refusals to test—no matter the reason for the refusal—were not considered appropriate for inclusion. Despite the instruction to include no refusals, we know that many companies included those that were the result of adulterated or substituted results that were verified by the MRO as refusals. Still other companies counted these types of refusals as well as refusal events for which no urine was sent to laboratories for testing (*e.g.*, employee failed to show-up at the collection site; employee left the collection site before urine had been collected).

Similarly, in determining if companies were conducting random testing at the appropriate established annual rates, some DOT agencies did not count refusals; some counted all refusals; and still others counted only refusals reported by the MRO (as a result of adulteration or substitution) toward satisfaction of the random testing rate requirement. Furthermore, in calculating the annual random rates for testing, all DOT agency rules said the following will be factored for the positive rate: number of random positives plus number of random refusals divided by the number of random tests plus the number of random refusals. This means that some cancelled random tests and random refusals were already in the random test numbers before the number of random refusals had been added to the total.

To clear up these discrepancies, the Department will count the number of specimens collected as the number of testing events resulting in negative, positive, and refusal to test results no matter the reason for the refusal. We have added all refusals to the number of tests because DOT agencies factor refusals into determining whether or not employers have met annual random testing rate requirements. We will not add cancelled test results to the mix because part 40.207(b) says, ''. . . a cancelled test does not count toward compliance with DOT requirements (*e.g.*, being applied toward the number of tests needed to meet the employer's minimum random testing rate).''

Invalid test results are always cancelled and will not be included. However, those invalid results requiring a subsequent directly observed collection will simply be considered another collection that will have a final result. In addition, blind testing will not be counted as a testing event. Counting in this manner will enable many of the columns and rows of the MIS form to total up.

In addition, annual random testing rates will be determined using more accurate counts because no cancelled test will be mistakenly included and no refusals will be factored twice in the total. DOT agency inspectors, reviewers, and auditors will count all refusals (*e.g.*, be they from an adulterated specimen result or from ''shy bladder'' evaluation with no medical condition) as satisfying a company's meeting its random testing rate.

For cancellations requiring the employee to take a second test, the test that is cancelled will not count. However, the result of the subsequent recollection will count, provided that it too is not cancelled. These situations include: invalid test cancellations requiring the employee to go in for an observed collection; split specimen cancellations requiring the employee to go in for an observed collection; and cancellations requiring the employee to go in for another collection because a negative result is needed (for pre-employment; return to duty; and follow-up testing).

In addition, if more than one set of specimens is sent to the lab during one testing event, they will count together as one collection: These include: negative-dilute specimens when the employee goes in for a second collection per employee policy [the result of the second test is the result of record]; and observed collections requiring both the

original collection and the observed collection be sent to the laboratory (*e.g.*, specimen out of temperature range) [the result requiring the most stringent consequence will ultimately be the result of record].

The Department is also clarifying and making uniform among DOT agencies how employers determine the total number of employees against which the annual random rate applies. Some DOT agencies have told employers to count the number of covered employees working at the start of the calendar year; some DOT agencies have directed employers to count the total number of covered employees that worked for the company within the year; and still others have advised employers to count the average number of employees on a monthly or quarterly basis.

This rule directs employers to add the total number of covered employees eligible for random testing in each random testing selection period for the year and divide that total by the number of random testing periods. For instance, a company conducting random testing quarterly will add the total of safety-sensitive employees they had in the random pool when each selection was made; then divide this number by 4 to obtain the yearly average number of covered employees. [As an example, if Company A had 1500 employees in the first quarter random pool, 2250 in the second quarter, 2750 in the third quarter; and 1500 in the fourth quarter; 1500 + 2250 + 2750 + 1500 = 8000; 8000 / 4 = 2000; the total number of employees subject to testing for the year would be reported as ''2000''. (Note: This number, ''2000'', would also be the number on which an employer would base the random testing rate.)]

As stated earlier, no company will be required to factor the average number of employees more often than once per month: No more than 12 times per year.

Companies (and their contractors, as applicable) will continue to submit the MIS reports in accordance with requirements (*e.g.*, dates for submission; selection of companies required to submit, etc.) that will continue to be in each DOT agency regulation. Likewise, DOT agency regulations will continue to address the manner (*e.g.*, mail; CD; electronic transmission) and locations for submitting the forms. Responding to a commenter, we have added a reference to this in rule text.

It is important to note that MIS alcohol testing data reflects all these proposals made for MIS drug testing data. Refusals will count as testing events; cancelled tests will not; and random pool averages will determine the number of employees against which the annual testing rate applies.

The Department is currently working toward an electronic MIS form capable of Internet submission. Each form would be DOT agency specific and would not have extraneous items showing (for example, the USCG-specific form would not include an alcohol testing section; the RSPA-specific form would not show an alcohol random testing category). Additionally, the system would bring to the attention of the person completing the form any items that did not accurately compute mathematically. Finally, employee categories listed would only be those for the specific DOT agency.

The Department recognizes that Consortia/Third Party Administrators (C/TPAs) are responsible for administering a large number of transportation industry drug and alcohol testing programs. For this reason, the MIS form will contain a space for the employer to note the name of the C/TPA the company uses, if any. Finally, we have made some of the minor, but useful changes recommended by several commenters and DOT agency representatives. These include typographical, counting, and example errors; and the option to use zeros instead of leaving testing data items blank.

Finally, the Department wants reasonable suspicion and reasonable cause testing to be counted together on the MIS form with no differentiation between the two. The issue of how to count these two types of tests has been complicated by the fact that neither the CCF nor the BATF distinguish between the two even though the DOT agencies do. For instance, FMCSA and FTA authorize reasonable suspicion drug testing; FAA, RSPA, and USCG authorize reasonable cause drug testing; and FRA authorizes both. FMCSA, FAA, FTA, and RSPA authorize reasonable suspicion alcohol testing; and FRA authorizes both reasonable suspicion and reasonable cause alcohol testing. Sufficient documentation should exist with employers for DOT agency representatives to tell the difference between the two during inspections and audits.

Regulatory Analyses and Notices

This rule is not a significant rule for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. Nor is the rule an economically significant regulation. It is a reworking of existing requirements; it imposes no new mandates; and it will not create any new costs. In fact, the rule will serve to reduce requirements and costs. The Department realizes that some companies maintain their current MIS data items on basic computer spreadsheets. However, we are requiring only a minimal number of additions to the format while removing a larger number of items.

This final rule does not have sufficient Federalism impact to warrant a Federalism assessment under Executive Order 13132. With respect to the Regulatory Flexibility Act, the certifies that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities, so a Regulatory Flexibility analysis has not been prepared. Even though this rule might affect a large number of small entities, we do not expect the new MIS requirements to have a significant economic impact on anyone.

The rule also contains information collection requirements. As required by the Paperwork Reduction Act of 1995, (the PRA, 44 U.S.C. 3507(d)), the Department is submitting these requirements to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review, as required under the PRA. For informational purposes, the Department will place its entire PRA package for the MIS form on the Internet when that submission is approved.

As noted elsewhere in this preamble, the proposal would amend part 40 to include a new format and a new set of instructions for the MIS form. This single form would be used across DOT agencies rather than the multiple forms with multiple instructions currently in use. The form's data elements would be reduced significantly as well.

Completing an MIS report requires a company to collect and compile drug and alcohol testing data generated throughout the year by that company's drug and alcohol testing program and placing some of that data onto the form. Certainly, the more complex a company's testing program set-up, the more complex assembling needed data becomes. Companies having decentralized program locations may have to draw information from a variety of localized programs. Companies with a number of subsidiaries may have large amounts of data to compile and authenticate. In addition, companies failing to regularly update and bring together their testing data may find themselves in positions of having to do so in a hurried manner at the end of the year. Also, companies lacking computerization of data capabilities may have to rely on manual methods.

Because MIS reporting has been part of the DOT testing equation for several years, many companies have become experienced in and have applied sound business sense to putting the report together. Many companies update their drug and alcohol program data on a regular, throughout-the-year basis rather than doing so at the last minute. Most companies require their localized programs, subsidiaries, and contractors to regularly provide program updates rather than authenticate data at the end of the year. Many companies utilize computer databases rather than ''pen-and-ink'' data entries. Still other companies prefer to have data entry provided as part of their C/TPA's contracted services.

Whatever the case, the Department does not require any particular management approach to compiling program data: We simply require that the data be accurate; that it be in a system that has controlled access; that it be readily auditable; and that specific data be included in MIS reports when they are required or requested by DOT agencies. The Department would prefer that companies update their drug and alcohol program data throughout the year; require their divisions, subsidiaries, and contractors to report their data regularly to them; and computerize their data-entry methodologies. However, we do not mandate these actions even though we think they are all preferable to end-of-the-year company scrambles to complete MIS forms.

The Department believes that requiring less data entry on MIS forms and having only one form throughout the transportation industries will make data gathering and compilation simpler. For instance, no longer will employers need to provide employee and supervisor training data, violation consequence data, and non-Part 40 violation data (among other entries). Furthermore, the single-format MIS form replaces the ''EZ'' drug form, the ''EZ'' alcohol form, the long drug form, and the long alcohol form, the formats of which were different for each DOT agency. Therefore, employers subject to more than one DOT agency rule will not have to navigate their ways through multiple MIS formats.

These represent important steps in reducing the amount of time needed to compile data for MIS purposes—no matter how a company chooses to manage their drug and alcohol testing data. The Department believes the simplicity of the form will result in another significant time saving action for employers.

DOT agency MIS PRA submissions for the old MIS forms reveal that nearly 6,800 companies submit 13,541 MIS forms annually to DOT; and the time it takes to fill out the forms is 18,406 hours. Estimates for the new MIS form indicate that these companies will send 7,186 MIS reports to DOT and the time to complete them will be 10,779 hours. Therefore, we foresee over 7,500 hours saved per year in filling out the new MIS form as opposed to completing the old multiple MIS forms. [Based upon industry and DOT agency estimates, we have concluded that the new MIS report will take between 45 minutes and 1.5 hours to complete. We have chosen, for this paragraph and for our OMB PRA submission, to use the highest industry and DOT agency estimate —1.5 hours. We estimate that slightly over 300 companies report to more than one DOT agency.]

According to OMB's regulations implementing the PRA (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person need not respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information will be published in the **Federal Register** after OMB approves it.

A number of other Executive Orders can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this rule, and we believe that the rule does not directly affect matters that the Executive Orders cover.

We have prepared this rulemaking in accordance with the Presidential Directive on Plain Language.

List of Subjects in 49 CFR Part 40

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 9th day of July, 2003, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ For reasons set forth in the preamble, the Department of Transportation amends Part 40 of Title 49, Code of Federal Regulations, as follows:

■ 1. The authority citation for 49 CFR Part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

■ 2. Add a new § 40.26 to read as follows:

§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?

As an employer, when you are required to report MIS data to a DOT agency, you must use the form and instructions at appendix H to part 40. You must submit the MIS report in accordance with rule requirements (*e.g.*, dates for submission; selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

■ 3. Add a new Appendix H to read as follows:

Appendix H to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

The following form and instructions must be used when an employer is required to report MIS data to a DOT agency.

BILLING CODE 4910–62–P

U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

Calendar Year Covered by this Report: _____

I. Employer:

Company Name: _____

Doing Business As (DBA) Name (if applicable): _____

Address: _____ E-mail: _____

Name of Certifying Official: _____ Signature: _____

Telephone: (_____) _____ Date Certified: _____

Prepared by (if different): _____ Telephone: (_____) _____

C/TPA Name and Telephone (if applicable): _____ (_____) _____

Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:

___ FMSCA – Motor Carrier: DOT #: _____ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO

___ FAA – Aviation: Certificate # (if applicable): _____ Plan / Registration # (if applicable): _____

___ RSPA – Pipeline: (Check) Gas Gathering__ Gas Transmission__ Gas Distribution__ Transport Hazardous Liquids__ Transport Carbon Dioxide__

___ FRA – Railroad: Total Number of observed/documented Part 219 "Rule G" Observations for covered employees: _____

___ USCG – Maritime: Vessel ID # (USCG- or State-Issued): _____ (If more than one vessel, list separately.)

___ FTA – Transit

II. Covered Employees: (A) Enter Total Number Safety-Sensitive Employees In All Employee Categories: _____

(B) Enter Total Number of Employee Categories: _____

(C)

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories, complete Sections I and II (A) & (B). Take that filled-in form and make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.

III. Drug Testing Data:

	1	2	3	4	5	6	7	8	9	10	11	12	13
									Refusal Results				
Type of Test	Total Number Of Test Results [Should equal the sum of Columns 2, 3, 9, 10, 11, and 12]	Verified Negative Results	Verified Positive Results ~ For One Or More Drugs	Positive For Marijuana	Positive For Cocaine	Positive For PCP	Positive For Opiates	Positive For Amphetamines	Adulterated	Substituted	"Shy Bladder" ~ With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment													
Random													
Post-Accident													
Reasonable Susp./Cause													
Return-to-Duty													
Follow-Up													
TOTAL													

IV. Alcohol Testing Data:

	1	2	3	4	5	6	7	8	9
							Refusal Results		
Type of Test	Total Number Of Screening Test Results [Should equal the sum of Columns 2, 3, 7, and 8]	Screening Tests With Results Below 0.02	Screening Tests With Results 0.02 Or Greater	Number Of Confirmation Tests Results	Confirmation Tests With Results 0.02 Through 0.039	Confirmation Tests With Results 0.04 Or Greater	"Shy Lung" ~ With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment									
Random									
Post-Accident									
Reasonable Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 2105-0529. The Department of Transportation estimates that the average burden for this report form is 1.5 hours. You may send comments regarding this burden estimate or any suggestions for reducing the burden to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, Room 10403, 400 Seventh Street, SW, Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project, 725 Seventeenth Street, NW, Washington, D.C. 20503.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements of representations in any matter within the jurisdiction of any agency of the United States.

U.S. DEPARTMENT OF TRANSPORTATION
DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM
INSTRUCTION SHEET

This Management Information System (MIS) form is made-up of four sections: employer information; covered employees (i.e., employees performing DOT regulated safety-sensitive duties) information; drug testing data; and alcohol testing data. The employer information needs only to be provided once per submission. However, you must submit a separate page of data for each employee category for which you report testing data. If you are preparing reports for more than one DOT agency then you must submit DOT agency-specific forms.

Please type or print entries legibly in black ink.

TIP *~ Read the entire instructions before starting. Please note that USCG-regulated employers do not report alcohol test results on the MIS form.*

Calendar Year Covered by this Report: Enter the appropriate year.

Section I. Employer

1. Enter your company's name, to include when applicable, your "doing business as" name; current address, city, state, and zip code; and an e-mail address, if available.
2. Enter the printed name, signature, and complete telephone number of the company official certifying the accuracy of the report and the date that person certified the report as complete.
3. If someone other than the certifying official completed the MIS form, enter that person's name and phone number on the appropriate lines provided.
4. If a Consortium/Third Party Administrator (C/TPA) performs administrative services for your drug and alcohol program operation, enter its name and phone number on the appropriate lines provided.
5. DOT Agency Information: Check the box next to the DOT agency for which you are completing this MIS form. Again, if you are submitting to multiple DOT agencies, you must use separate forms for each DOT agency.

a. If you are completing the form for FMCSA, enter your FMCSA DOT Number, as appropriate. In addition, you must indicate whether you are an owner-operator (i.e., an employer who employs only himself or herself as a driver) and whether you are exempt from providing MIS data. Exemptions are noted in the FMCSA regulation at 382.103(d).

b. If you are completing the form for FAA, enter your FAA Certificate Number and FAA Antidrug Plan / Registration Number, when applicable.

c. If you are completing the form for RSPA, check the additional box(s) indicating your type of operation.

d. If you are completing the form for FRA, enter the number of observed/documented Part 219 "Rule G" Observations for covered employees.

e. If you are submitting the form for USCG, enter the vessel ID number. If there is more than one number, enter the numbers separately.

Section II. Covered Employees

1. In Box II-A, enter the total number of covered employees (i.e., employees performing DOT regulated safety-sensitive duties) who work for your company. Then enter, in Box II-B, the total number of employee categories that number represents. If you have employees, some of whom perform duties under one DOT agency and others of whom perform duties under another DOT agency, enter only the number of those employees performing duties under the DOT agency for whom you are submitting the form. If you have covered employees who perform multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency regulating more than 50 percent of the employee's safety sensitive function.

[Example: If you are submitting the information for the FRA and you have 2000 covered employees performing duties in all FRA-covered service categories – you would enter "2000" in the first box (II-A) and "5" in the second box (II-B), because FRA has five safety-sensitive employee categories and you have employees in all of these groups. If you have 1000 employees performing safety-sensitive duties in three FRA-covered service categories (e.g., engine service, train service, and dispatcher/operation), you would enter "1000" in the first box (II-A) and "3" in the second box (II-B).]

TIP *~ To calculate the total number of covered employees, add the total number of covered employees eligible for testing during each random testing selection period for the year and divide that total by the number of random testing periods. (However, no company will need to factor the average number of employees more often than once per month). For instance, a company conducting random testing quarterly needs to add the total of covered employees they had in the random pool when each selection was made; then divide this number by 4 to obtain the yearly average number of covered employees. It is extremely important that you place all eligible employees into these random pools. [As an example, if Company A had 1500 employees in the first quarter random pool, 2250 in the second quarter, 2750 in the third quarter; and 1500 in the fourth quarter; 1500 + 2250 + 2750 + 1500 = 8000; 8000 / 4 = 2000; the total number of covered employees for the year would be reported as, "2000".*

If you conduct random selections more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. Therefore, employers need not compute the covered employees rate more than 12 times per year.]

2. If you are reporting multiple employee categories, enter the specific employee category in box II-C; and provide the number of employees performing safety-sensitive duties in that specific category.

[Example: You are submitting data to the FTA and you have 2000 covered employees. You have 1750 personnel performing revenue vehicle operation and the remaining 250 are performing revenue vehicle and equipment maintenance. When you provide vehicle operation information, you would enter "Revenue Vehicle Operation" in the first II-C box and "1750" in the second II-C box. When you provide data on the maintenance personnel, you would enter "Revenue Vehicle and Equipment Maintenance" in the first II-C box and "250" in the second II-C box.]

TIP *~ A separate form for each employee category must be submitted. You may do this by filling out a single MIS form through Section II-B and then make one copy for each additional employee category you are reporting. [For instance, if you are submitting the MIS form for the FMCSA, you need only submit one form for all FMCSA covered employees working for you – your only category of employees is "driver." If you are reporting testing data to the FAA and you employ only flight crewmembers, flight attendants, and aircraft maintenance workers, you need to complete one form each for category – three forms in all. If you are reporting to FAA and have all FAA categories of covered employees, you must submit eight forms.]*

Here is a full listing of covered-employee categories:

FMCSA *(one category): Driver*
FAA *(eight categories): Flight Crewmember; Flight Attendant; Flight Instructor; Aircraft Dispatcher; Aircraft Maintenance; Ground Security Coordinator; Aviation Screener; Air Traffic Controller*
RSPA *(one category): Operation/Maintenance/Emergency Response*
FRA *(five categories): Engine Service; Train Service; Dispatcher/Operation; Signal Service; Other [Includes yardmasters, hostlers (non-engineer craft), bridge tenders; switch tenders, and other miscellaneous employees performing 49 CFR 228.5 (c) defined covered service.]*
USCG *(one category): Crewmember*
FTA *(five categories): Revenue Vehicle Operation; Revenue Vehicle and Equipment Maintenance; Revenue Vehicle Control/Dispatch; CDL/Non-Revenue Vehicle; Armed Security Personnel*

Section III. Drug Testing Data

This section summarizes the drug testing results for all covered employees (to include applicants). The table in this section requires drug test data by test type and by result. The categories of test types are: Pre-Employment; Random; Post-Accident; Reasonable Suspicion / Reasonable Cause; Return-to-Duty, and Follow-Up.

The categories of type of results are: Total Number of Test Results [excluding cancelled tests and blind specimens]; Verified Negative; Verified Positive; Positive for Marijuana; Positive for Cocaine; Positive for PCP; Positive for Opiates; Positive for Amphetamines; Refusals due to Adulterated, Substituted, "Shy Bladder" with No Medical Explanation, and Other Refusals to Submit to Testing; and Cancelled Results.

TIP *~ Do not enter data on blind specimens submitted to laboratories. Be sure to enter all pre-employment testing data regardless of whether an applicant was hired or not. You do not need to separate reasonable suspicion and reasonable cause drug testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion drug testing (i.e., FMCSA and FTA), enter that data; if you conducted only reasonable cause drug testing (i.e., FAA, RSPA, and USCG); or if you conducted both under FRA drug testing rules, simply enter the data with no differentiation.] For USCG, enter any "Serious Marine Incident" testing in the Post-Accident row. For FRA, do not enter post accident data (the FRA does not collect this data on the MIS form). Finally, you may leave blank any row or column in which there were no results, or you may enter "0" (zero) instead. Please note that cancelled tests are not included in the "total number of test results" column.*

Section III, Column 1. Total Number of Test Results ~ This column requires a count of the total number of test results in each testing category during the entire reporting year. Count the number of test results as the number of testing events resulting in negative, positive, and refusal results. Do not count cancelled tests and blind specimens in this total.

[Example: A company that conducted fifty pre-employment tests would enter "50" on the Pre-Employment row. If it conducted one hundred random tests, "100' would be entered on the Random row. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, those categories will be left blank or zeros entered.]

Section III, Column 2. Verified Negative Results ~ This column requires a count of the number of tests in each testing category that the Medical Review Officer (MRO) reported as negative. Do not count a negative-dilute result if, subsequently, the employee underwent a second collection; the second test is the test of record.

[Example: If forty-seven of the company's fifty pre-employment tests were reported negative, "47" would be entered in Column 2 on the Pre-Employment row. If ninety of the company's one hundred random test results were reported negative, "90" would be entered in Column 2 on the Random row. Because the company did no other testing, those other categories would be left blank or zeros entered.]

Section III, Column 3. Verified Positive Results ~ For One Or More Drugs ~ This column requires a count of the number of tests in each testing category that the MRO reported as positive for one or more drugs. When the MRO reports a test positive for two drugs, it would count as one positive test.

[Example: If one of the fifty pre-employment tests was positive for two drugs, "1" would be entered in Column 3 on the Pre-Employment row. If four of the company's one hundred random test results were reported positive (three for one drug and one for two drugs), "4" would be entered in Column 3 on the Random row.]

■ **Section III, Columns 4 through 8. Positive** (for specific drugs) ~ These columns require entry of the by-drug data for which specimens were reported positive by the MRO.

[Example: The pre-employment positive test reported by the MRO was positive for marijuana, "1" would be entered in Column 4 on the Pre-Employment row. If three of the four positive results for random testing were reported by the MRO to be positive for marijuana, "3" would be entered in Column 4 on the Random row. If one of the four positive results for random testing was reported positive for both PCP and opiates, "1" would be entered in Column 6 on the Random row and "1" would be entered in Column 7 of the Random row.]

TIP *~ Column 1 should equal the sum of Columns 2, 3, 9, 10, 11, and 12. Remember you have not counted specimen results that were ultimately cancelled or were from blind specimens. So, Column 1 = Column 2 + Column 3 + Column 9 + Column 10 + Column 11 + Column 12. Certainly, double check your records to determine if your actual results count is reflective of all negative, positive, and refusal counts.*

An MRO may report that a specimen is positive for more than one drug. When that happens, to use the company example above (i.e., one random test was positive for both PCP and opiates), the positive results should be recorded in the appropriate columns – PCP and opiates in this case. There is no expectation for Columns 4 through 8 numbers to add up to the numbers in Column 3 when you report multiple positives.

Section III, Columns 9 through 12. Refusal Results ~ The refusal section is divided into four refusal groups – they are: Adulterated; Substituted; "Shy Bladder" ~ With No Medical Explanation; and Other Refusals To Submit to Testing. The MRO reports two of these refusal types – adulterated and substituted specimen results – because of laboratory test findings.

When an individual does not provide enough urine at the collection site, the MRO conducts or causes to have conducted a medical evaluation to determine if there exists a medical reason for the person's inability to provide the appropriate amount of urine. If there is no medical reason to support the inability, the MRO reports the result to the employer as a refusal to test: Refusals of this type are reported in the "Shy Bladder" ~ With No Medical Explanation category.

Finally, additional reasons exist for a test to be considered a refusal. Some examples are: the employee fails to report to the collection site as directed by the employer; the employee leaves the collection site without permission; the employee fails to empty his or her pockets at the collection site; the employee refuses to have a required shy bladder evaluation. Again, these are only four examples: there are more.

■ **Section III, Column 9. Adulterated** ~ This column requires the count of the number of tests reported by the MRO as refusals because the specimens were adulterated.

[Example: If one of the fifty pre-employment tests was adulterated, "1" would be entered in Column 9 of the Pre-Employment row.]

■ **Section III, Column 10. Substituted** ~ This column requires the count of the number of tests reported by the MRO as refusals because the specimens were substituted.

[Example: If one of the 100 random tests was substituted, "1" would be entered in Column 10 of the Random row.]

■ **Section III, Column 11. "Shy Bladder" ~ With No Medical Explanation** ~ This column requires the count of the number of tests reported by the MRO as being a refusal because there was no legitimate medical reason for an insufficient amount of urine.

[Example: If one of the 100 random tests was a refusal because of shy bladder, "1" would be entered in Column 11 of the Random row.]

■ **Section III, Column 12. Other Refusals To Submit To Testing** ~ This column requires the count of refusals other than those already entered in Columns 9 through 11.

[Example: If the company entered "100" as the number of random specimens collected, however it had five employees who refused to be tested without submitting specimens: two did not show up at the collection site as directed; one refused to empty his pockets at the collection site; and two left the collection site rather than submit to a required directly observed collection. Because of these five refusal events, "5" would be entered in Column 11 of the Random row.]

TIP *~ Even though some testing events result in a refusal in which no urine was collected and sent to the laboratory, a "refusal" is still a final test result. Therefore, your overall numbers for test results (in Column 1) will equal the total number of negative tests (Column 2); positives (Column 3); and refusals (Columns 9, 10, 11, and 12). Do not worry that no urine was processed at the laboratory for some refusals; all refusals are counted as a testing event for MIS purposes and for establishing random rates.*

Section III, Column 13. Cancelled Tests ~ This column requires a count of the number of tests in each testing category that the MRO reported as cancelled. You must not count any cancelled tests in Column 1 or in any other column. For instance, you must not count a positive result (in Column 3) if it had ultimately been cancelled for any reason (e.g., specimen was initially reported positive, but the split failed to reconfirm).

[Example: If a pre-employment test was reported cancelled, "1" would be entered in Column 13 on the Pre-Employment row. If three of the company's random test results were reported cancelled, "3" would be entered in Column 13 on the Random row.]

TOTAL Line. Columns 1 through 13 ~ This line requires you to add the numbers in each column and provide the totals.

Section IV. Alcohol Testing Data

This section summarizes the alcohol testing conducted for all covered employees (to include applicants). The table in this section requires alcohol test data by test type and by result. The categories of test types are: Pre-Employment; Random; Post-Accident; Reasonable Suspicion / Reasonable Cause; Return-to-Duty, and Follow-Up.

The categories of results are: Number of Screening Test Results; Screening Tests with Results Below 0.02; Screening Tests with Results 0.02 Or Greater; Number of Confirmation Test Results; Confirmation Tests with Results 0.02 through 0.039; Confirmation Tests with Results 0.04 Or Greater; Refusals due to "Shy Lung" with No Medical Explanation, and Other Refusals to Submit to Testing; and Cancelled Results.

TIP *~ Be sure to enter all pre-employment testing data regardless of whether an applicant was hired or not. Of course, for most employers pre-employment alcohol testing is optional, so you may not have conducted this type of testing. You do not need to separate "reasonable suspicion" and "reasonable cause" alcohol testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion alcohol testing (i.e., FMCSA, FAA, FTA, and RSPA), enter that data; if you conducted both reasonable suspicion and reasonable cause alcohol testing (i.e.., FRA), simply enter the data with no differentiation.] RSPA does not authorize "random" testing for alcohol. Finally, you may leave blank any row or column in which there were no results, or you may enter "0" (zero) instead. Please note that USCG-regulated employers do not report alcohol test results on the MIS form: Do not fill-out Section IV if you are a USCG-regulated employer.*

Section IV, Column 1. Total Number of Screening Test Results ~ This column requires a count of the total number of screening test results in each testing category during the entire reporting year. Count the number of screening tests as the number of screening test events with final screening results of below 0.02, of 0.02 through 0.039, of 0.04 or greater, and all refusals. Do not count cancelled tests in this total.

[Example: A company that conducted twenty pre-employment tests would enter "20" on the Pre-Employment row. If it conducted fifty random tests, "50' would be entered. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, those categories will be left blank or zeros entered.]

Section IV, Column 2. Screening Tests With Results Below 0.02 ~ This column requires a count of the number of tests in each testing category that the BAT or STT reported as being below 0.02 on the screening test.

[Example: If seventeen of the company's twenty pre-employment screening tests were reported as being below 0.02, "17" would be entered in Column 2 on the Pre-Employment row. If forty-four of the company's fifty random screening test results were reported as being below 0.02, "44" would be entered in Column 2 on the Random row. Because the company did no other testing, those other categories would be left blank or zeros entered.]

Section IV, Column 3. Screening Tests With Results 0.02 Or Greater ~ This column requires a count of the number of screening tests in each testing category that BAT or STT reported as being 0.02 or greater on the screening test.

[Example: If one of the twenty pre-employment tests was reported as being 0.02 or greater, "1" would be entered in Column 3 on the Pre-Employment row. If four of the company's fifty random test results were reported as being 0.02 or greater, "4" would be entered in Column 3 on the Random row.]

Section IV, Column 4. Number of Confirmation Test Results ~ This column requires entry of the number of confirmation tests that were conducted by a BAT as a result of the screening tests that were found to be 0.02 or greater. In effect, all screening tests of 0.02 or greater should have resulted in confirmation tests. Ideally the number of tests in Column 3 and Column 4 should be the same. However, we know that this required confirmation test sometimes does not occur. In any case, the number of confirmation tests that were actually performed should be entered in Column 4.

[Example: If the one pre-employment screening test reported as 0.02 or greater had a subsequent confirmation test performed by a BAT, "1" would be entered in Column 4 on the Pre-Employment row. If three of the four random screening tests that were found to be 0.02 or greater had a subsequent confirmation test performed by a BAT, "3" would be entered in Column 4 on the Random row.]

Section IV, Column 5. Confirmation Tests With Results 0.02 Through 0.039 ~ This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.02 through 0.039.

[Example: If the one pre-employment confirmation test yielded a result of 0.042, Column 5 of the Pre-Employment row would be left blank or zeros entered. If two of the random confirmation tests yielded results of 0.03 and 0.032, "2" would be entered in Column 5 of the Random row.]

Section IV, Column 6. Confirmation Tests With Results 0.04 Or Greater ~ This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.04 or greater.

[Example: Because the one pre-employment confirmation test yielded a result of 0.042, "1" would be entered in Column 6 of the Pre-Employment row. If one of the random confirmation tests yielded a result of 0.04, "1" would be entered in Column 6 of the Random row.]

TIP *~ Column 1 should equal the sum of Columns 2, 3, 7, and 8. The number of screening tests results should reflect the number of screening tests you have no matter the result (below 0.02 or at or above 0.02, plus refusals to test), unless of course, the tests were ultimately cancelled. So, Column 1 = Column 2 + Column 3 + Column 7 + Column 8. Certainly, double check your records to determine if your actual screening results count is reflective of all these counts.*

There is no need to record MIS confirmation tests results below 0.02: That is why we have no column for it on the form. [If the random test that screened 0.02 went to a confirmation test, and that confirmation test yielded a result below 0.02, there is no place for that confirmed result to be entered.] We assume that if a confirmation test was completed but not listed in either Column 5 or Column 6, the result was below 0.02. In addition, if the confirmation test ended up being cancelled, it should not have been included in Columns 1, 3, or 4 in the first place.

Section IV, Columns 7 and 8. Refusal Results ~ The refusal section is divided into two refusal groups – they are: Shy Lung ~ With No Medical Explanation; and Other Refusals To Submit to Testing. When an individual does not provide enough breath at the test site, the company requires the employee to have a medical evaluation to determine if there exists a medical reason for the person's inability to provide the appropriate amount of breath. If there is no medical reason to support the inability as reported by the examining physician, the employer calls the result a refusal to test: Refusals of this type are reported in the "Shy Lung ~ With No Medical Explanation" category.

Finally, additional reasons exist for a test to be considered a refusal. Some examples are: the employee fails to report to the test site as directed by the employer; the employee leaves the test site without permission; the employee fails to sign the certification at Step 2 of the ATF; the employee refuses to have a required shy lung evaluation. Again, these are only four examples; there are more.

■ **Section IV, Column 7. "Shy Lung" ~ With No Medical Explanation** ~ This column requires the count of the number of tests in which there is no medical reason to support the employee's inability to provide an adequate breath as reported by the examining physician; subsequently, the employer called the result a refusal to test.

[Example: If one of the 50 random tests was a refusal because of shy lung, "1" would be entered in Column 7 of the Random row.]

■ **Section IV, Column 8. Other Refusals To Submit To Testing** ~ This column requires the count of refusals other than those already entered in Columns 7.

[Example: The company entered "50" as the number of random specimens collected, however it had one employee who did not show up at the testing site as directed. Because of this one refusal event, "1" would be entered in Column 8 of the Random row.]

TIP *~ Even though some testing events result in a refusal in which no breath (or saliva) was tested, there is an expectation that your overall numbers for screening tests (in Column 1) will equal the total number of screening tests with results below 0.02 (Column 2); screening tests with results 0.02 or greater (Column 3); and refusals (Columns 7 and 8). Do not worry that no breath (or saliva) was tested for some refusals; all refusals are counted as a screening test event for MIS purposes and for establishing random rates.*

Section IV, Column 9. Cancelled Tests ~ This column requires a count of the number of tests in each testing category that the BAT or STT reported as cancelled. Do not count any cancelled tests in Column 1 or in any other column other than Column 9. For instance, you must not count a 0.04 screening result or confirmation result in any column, other than Column 9, if the test was ultimately cancelled for some reason (e.g., a required air blank was not performed).

[Example: If a pre-employment test was reported cancelled, "1" would be entered in Column 9 on the Pre-Employment row. If three of the company's random test results were reported cancelled, "3" would be entered in Column 13 on the Random row.]

TOTAL Line. Columns 1 through 9 ~ This line requires you to add the numbers in each column and provide the totals.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15712]

RIN 2127–AH08

Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule updates the Federal motor vehicle safety standard on glazing materials so that it incorporates by reference the 1996 version of the industry standard on motor vehicle glazing. Currently, the Federal standard references the 1977 version of the industry standard and the 1980 supplement to that standard.

Today's final rule also simplifies understanding the Federal glazing performance requirements. The amendments of the past 20 years have resulted in a patchwork of requirements in the Federal standard that must be read alongside the industry standard in order to gain a comprehensive understanding of the overall requirements of the Federal standard. The incorporation by reference of the 1996 version of the industry standard permits the deletion of most of the existing text of the Federal standard. This change to the Federal standard means that the industry standard will henceforth provide a single source of Federal glazing performance requirements for most purposes.

In addition, this final rule addresses several issues not covered by the 1996 American National Standards Institute (ANSI) standard. For example, this action limits the size of the shade band that glazing manufacturers place at the top of windshields and clarifies the meaning of the phrase ''the most difficult part or pattern'' for the fracture test in the 1996 ANSI standard. This action also makes minor conforming amendments to the standard on low speed vehicles.

DATES: Effective date: This final rule is effective September 23, 2003. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 23, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by September 8, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. John Lee, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4924. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

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I. Background

By letter dated August 12, 1997, the American Automobile Manufacturers Association (AAMA) (which has since evolved into the Alliance of Automobile Manufacturers) petitioned us to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing Materials'' (49 CFR 571.205), to incorporate the most recent update of the American National Standards Institute (ANSI)

standard: American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways—ANSI/SAE Z26.1–1996 (''ANSI/SAE Z26.1–1996''). AAMA stated in its petition that incorporating ANSI/SAE Z26.1–1996 would improve safety, achieve international harmonization, streamline and clarify FMVSS No. 205, and eliminate wire glass as an approved safety glazing option. On January 2, 1998, we granted the AAMA's petition.

FMVSS No. 205 specifies performance requirements for the types of glazing that may be installed in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be installed. The standard incorporates by reference ANSI Standard Z26.1, ''Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,'' as amended through 1980 (''ANS Z26.1'').[1] The requirements in ANS Z26.1 are specified in terms of performance tests that the various types or ''items'' of glazing must pass. There are 21 ''items'' of glazing for which requirements are currently specified in FMVSS No. 205.

The Society of Automotive Engineers (SAE) Glazing Materials Standards Committee, acting under the sponsorship of ANSI, has revised the ANSI standard periodically. However, since the FMVSS cannot be changed except through rulemaking, revisions to the ANSI standard do not become part of FMVSS No. 205 unless we expressly identify and incorporate them through a rulemaking. SAE previously petitioned us to upgrade ANS Z26.1 with 1983 and 1990 revisions. However, we denied those petitions.

In addition to incorporating some of the revisions of the ANSI standard, we have occasionally updated FMVSS No. 205 directly by adding provisions similar or identical to those in various revisions of the ANSI standard.

II. Summary of the Notice of Proposed Rulemaking (NPRM)

On August 4, 1999, NHTSA published a NPRM (64 FR 42330) proposing to amend FMVSS No. 205 by incorporating by reference ANSI/SAE Z26.1–1996. In this notice, NHTSA discussed the benefits of incorporating ANSI/SAE Z26.1–1996, and proposed revisions to FMVSS No. 205.

[1] The most recent revision we incorporated into FMVSS No. 205 was ANSI Z26.1a–1980, which supplemented the 1977 version. It was incorporated by a final rule published on February 23, 1984 (49 FR 6732).

A. Benefits of Incorporating ANSI/SAE Z26.1–1996

NHTSA tentatively concluded that incorporating ANSI/SAE Z26.1–1996 would be beneficial for (1) improved safety, (2) harmonization with foreign glazing standards, and (3) streamlining and clarification.

1. Improved Safety

ANSI Z26.1 requires a fracture test (Test No. 7) of a 305 mm (12 in.) square, flat sample of glazing. In contrast, ANSI/SAE Z26.1–1996 requires the use of a full-size production piece of vehicle window glass. Paragraph 5.7.2 of ANSI/SAE Z26.1–1996 states that the specimens of glazing selected for testing ''shall be of the most difficult part or pattern designation within the model number.'' NHTSA stated that it interpreted this to mean the portion of glazing which we consider most likely to fail the test.

ANSI/SAE Z26.1–1996 also improves safety by eliminating wire glass as an approved glazing material. Wire glass is flat-rolled glass reinforced with wire mesh. Wire glass is known to shatter more readily at lower impact speeds and is more lacerative than laminated glass. Wire glass was used in past automotive applications. However, this practice has been discontinued and, to our knowledge, no company currently produces wire glass for vehicle use.

2. Harmonization with Foreign Glazing Standards

Incorporating ANSI/SAE Z26.1–1996 will improve harmonization between US, Canadian, and European glazing standards in the following ways:

- The test fixture for the impact, fracture and penetration resistance tests (Tests 6, 7, 8, 9, 10, 11, 12, 13, 14 and 26) is identical to the support frame required in Economic Commission for Europe (ECE) Regulation R43.
- The equipment used for the abrasion test (Tests 17 and 18) is similar to that used under ECE R43.
- The Weathering Test (Test 16) is similar to International Organization for Standardization (''ISO'') Standard 3917, which requires a xenon light source, instead of the carbon arc light source currently specified in FMVSS No. 205.
- The solvents specified in the chemical resistance test (Test 20) have been revised to conform to the requirements of the American Society for Testing and Materials (ASTM) and Occupant Safety and Health Administration (OSHA). These are the same solvents specified in ECE R43. This will also result in consistency with the NTTAA (National Technology Transfer Advancement Act), which requires use of voluntary consensus standards unless such use is infeasible or otherwise inconsistent with law.
- Canadian Motor Vehicle Safety Standard No. 205, ''Glazing Materials,'' already incorporates ANSI/SAE Z26.1–1996. Therefore, we would achieve closer harmonization of our Standard No. 205 and Canadian Standard No. 205.

3. Streamlining and Clarification

The proposed incorporation by reference of ANSI/SAE Z26.1–1996 would permit the deletion of most of the existing text of FMVSS No. 205. The amendments of the past 20 years have resulted in a patchwork of requirements that must be read in conjunction with the ANSI Z26.1 in order to gain a comprehensive understanding of the overall requirements of FMVSS No. 205. Adoption of the proposal would simplify FMVSS No. 205, consistent with our regulatory reform efforts.

B. Proposed Revisions to FMVSS No. 205

NHTSA discussed some proposed revisions to FMVSS No. 205, as described below.

First, NHTSA discussed the general nature of the textual changes to ANSI Z26.1. We stated that our substitution of the 1996 version for the 1980 version of the ANSI standard would not make many substantive changes to our standard since our current standard already contains many provisions of the 1996 version. They were directly added to our standard in various rulemaking proceedings between 1977 and 1996 to supplement the 1977 version of the ANSI standard.[2] Therefore, the practical effect of our incorporation by reference of the 1996 ANSI standard is that it would enable us to eliminate the provisions added to our standard between 1977 and 1996.

Second, NHTSA proposed to modify the application section of FMVSS No. 205 so that the standard explicitly applied to vehicles.

Third, NHTSA proposed that ''the most difficult part or pattern'' for the Fracture Test means that all portions of the glazing surface must be able to pass the test requirements.[3] We explained

[2] The 1996 provisions include new types of glazing, *e.g.* items 4A, 11C, 12, 13, 14, 15A, 15B, 16A, and 16B. ANSI/SAE Z26.1–1996 also includes numerous editorial and minor substantive changes made to be consistent with FMVSS No. 205 or to be internally consistent. We have listed these changes in a table submitted to the docket for the NPRM (Docket No. NHTSA 99–6024).

[3] The requirement for specimens to be tested for the fracture test in section 5.7.2 of ANSI/SAE

Continued

that we believe ''the most difficult part or pattern'' was intended to mean the part of the glazing that provides for ''worst case'' testing, not the type of difficulty contemplated or how we select the most difficult part or pattern in our compliance testing. Therefore, all portions of the glazing surface must be able to pass the test requirements. NHTSA proposed that this interpretation would be made explicit in the regulatory text of FMVSS No. 205.

Fourth, NHTSA tentatively concluded that a xenon arc light source produces a spectral power distribution closer to that of sunlight than the carbon arc lamp currently utilized in the weathering test procedures of ANSI Z26.1 and requested comment on this issue.[4] We said that carbon arc technology, which was developed in 1919 for textile and printing industries, is no longer the best light source for simulating sunlight because the spectral power distribution of carbon arc is unlike that of natural sunlight.[5] Further, we noted that most of the testing industry is currently using xenon-arc lamp test devices to simulate weathering.

Fifth, NHTSA proposed to modify FMVSS No. 205 to incorporate the June 1995 version of the Society of Automotive Engineers, Inc. (SAE), Recommended Practice J100, ''Class 'A' Vehicle Glazing Shade Bands'' (SAE J100) and requested comments on the appropriateness of that shade band standard or any alternative shade band standard that should be considered. NHTSA said that a visibility requirement needs to be set to establish boundaries for shade bands on glazed surfaces since we need to be able, for the purposes of compliance testing, to differentiate between those areas of a window that are intended to meet the 70 percent transmittance requirements and those areas that are not so intended.[6] Currently, neither FMVSS No. 205 nor the updated ANSI/SAE Z26.1–1996 set boundaries for the area of glazing that does not have to meet the 70 percent light transmittance requirement. SAE J100 sets limits for the shade band on the windshield, rear window and fixed side windows based upon the eyellipse of the 95th percentile male driver's eye positions in a vehicle.[7]

Sixth, NHTSA proposed modifying S5(b)(8) of FMVSS No. 500, ''Low-speed vehicles'' (49 CFR 571.500), to eliminate the incorporation by reference of ANSI Z26.1 and any reference to the permitted types of glazing.[8] Instead, S5(b)(8) would simply state that low speed vehicles must have windshield glazing that meets the requirements of FMVSS No. 205.

NHTSA also proposed to revise the applicability paragraph of FMVSS No. 205 to add low speed vehicles to the list of vehicles to which the standard applies. This would assure that manufacturers of glazing materials in low speed vehicles certify compliance with FMVSS No. 205. In addition, we proposed adding a paragraph to the requirements specifying the use of AS–1 or AS–4 glazing in the windshields of low speed vehicles. This section is necessary because the descriptions of the locations of glazing specified by the ANSI standard would not otherwise allow AS–5 glazing.

Also, NHTSA proposed to correct a technical error in FMVSS No. 500. We replaced AS–5 glazing with AS–4 glazing as a permitted glazing type in low speed vehicles. AS–4 is equivalent glazing to AS–5 but contains a light transmittance requirement so that it can be used in windshields, since the windshield is a location considered requisite for driving visibility.

Finally, NHTSA requested comments on the need to verify DOT numbers based on the concern of SAE's Glazing Materials Standards Committee regarding the accuracy of our Glazing Manufacturer list.[9] SAE has contended that only 25 percent of the manufacturers listed with DOT numbers are currently active; some of the manufacturers have gone out of business without notifying us, and many other manufacturers have moved or merged.

III. Summary of Public Comments to the NPRM

NHTSA received eight comments on the August 1999 NPRM. Three glazing manufacturers, three vehicle manufacturers, one glazing manufacturers association, and one automotive standards organization submitted the eight comments. The comments are summarized below.

A. Meaning of the ''Most Difficult Part or Pattern'' for the Fracture Test

Several manufacturers stated that NHTSA had misinterpreted the meaning of ''most difficult part or pattern'' and that the fracture test could be interpreted to have many fracture points, instead of a single point 25 mm (1 in.) in-bound along the center of the longest edge.

Sekurit Saint-Gobain (Sekurit), a glazing manufacturer, suggested that NHTSA adopt ISO 3537. ISO 3537 has several fracture points [(point 1, 30 mm (1.2 in.) from the edge in one corner; point 2, 30 mm (1.2 in.) from the nearest edge; point 3 at the geometric center, and for curved materials, point 4 on the longest median at a point of maximum curvature)] and allows for fracture of the windshield.

SAE encouraged NHTSA to revise S5.1.2 to read as follows: ''NHTSA may conduct the Fracture Test as specified in ANSI/SAE Z26.1–1996 Section 5.7 on any piece of glazing material that is required to comply with Section 5.7.''

B. Xenon Light Source for Weathering Test

Ford Motor Company (Ford) and SAE both commented that a xenon arc light source more closely simulates sunlight than does a carbon arc and that the xenon arc is a much-improved light source for the weathering tests. Ford also said that a xenon arc lamp would meet the requirement of ECE R43 stating that any source of radiation which produces the same effect as a mercury

Z26.1–1996 states, ''[t]he number of specimens selected from each model number of glazing shall be six (6) and shall all be of the most difficult part or pattern designation within the model number.''

[4] Laboratory-accelerated weathering tests are used to test the durability of glazing materials by simulating the damaging effects of sunlight over an extended period of time. The weathering tests are used to identify materials that are more susceptible to sun damage, such as rigid plastics, flexible plastics and glass-plastics (annealed and tempered). Currently, the weathering test procedures of ANSI Z26.1 simulate sunlight using a carbon arc lamp.

[5] Narrow spikes of energy in the ultraviolet range of the electromagnetic spectrum (wavelengths of 400 nm and below) can affect how some materials will degrade.

[6] ANSI Z26.1 requires most passenger car windows to pass a light transmittance test that assures that they transmit 70 percent of the incident light. While all windows in passenger cars are considered requisite for driving visibility, certain areas of the glazing that are not at levels requisite for driving visibility may be tinted. The most familiar location for the tinted areas is the upper region of the windshield. This area is typically called a ''shade band.''

[7] As defined in SAE's Recommended Practices, an eyellipse is a statistical representation of driver eye locations in road vehicles. It is an eye movement/position survey designed to identify vision and field of view contours. The 95th percentile male eyellipse is specified in SAE J100 because it is the highest eyellipse, and therefore is the eyellipse most likely to be blocked by the shade band.

[8] On June 17, 1998, we published (63 FR 33194) a new standard for ''low-speed vehicles'' (49 CFR 571.500). The rule defines low-speed vehicles as a separate vehicle type, and S5(b)(8) of the rule specifies the use of either AS–1 or AS–5 glazing for the windshield of these vehicles. The rule also separately incorporates by reference the 1977/1980 version of ANSI Z26.1, rather than cross-referencing FMVSS No. 205.

[9] Paragraph S6.2 of FMVSS No. 205 requires that the prime glazing manufacturer mark the glazing with, among other things, a manufacturer's mark. We assign the mark upon written request of the manufacturer. We maintain a list of glazing manufacturers and the marks assigned to them. One use of these code marks (often referred to as a ''DOT number'') is during an enforcement action to identify the manufacturer that produced a particular piece of glazing.

vapor lamp may be used for the test procedure.

C. Limiting the Width of the Shade Band

DaimlerChrysler (DC) and SAE supported the adoption of SAE J100 to identify areas of glazing not requisite for driving visibility. DC also urged the agency to clarify the definition of shade band to mean any obscuration band on a glazing because of the variations in band application to laminated safety glass (dye or pigment added to interlayer material prior to application) and tempered safety glass (pattern of lines and dots printed onto the glass surface).

Toyota Motor Corporation (Toyota) and the Flat Glass Manufacturers Association of Japan (FGMAJ), however, suggested incorporating ''area B,'' specified in ECE R43 92/22EC to establish boundaries for the shade band instead of incorporating SAE J100 because it would harmonize FMVSS No. 205 with the requirements adopted in Europe and Japan and because application of the ''area B'' requirement of ECE R43 is current practice for Toyota. More specifically, Toyota stated that FMVSS No. 205 should ''prescribe that the area of the windshield other than the 'area B' may be tinted'' and FGMAJ stated that the ''[d]etermination of the top boundary of windshield for driving visibility should be the upper edge of Zone B, which is drawn in accordance with V1 prescribed in ECE R43.''

Additionally, on the issue of whether shade band requirements should be applied to side and rear windows, FGMAJ stated, ''[t]his non-requirement provision for driving visibility should be limited to the windshield, which would harmonize with the international standard.''

D. Certification and Verification of DOT Numbers

Pilkington Libbey Owens Ford (LOF), and Glassig Inc. (Glassig), both glazing manufacturers, commented that DOT numbers should be kept current and suggested notification to the agency or re-certification every five years so that separate active and non-active manufacturer lists can be prepared. SAE suggested that NHTSA avoid reassigning DOT numbers and also supported the use of separate active and non-active manufacturer lists. Sekurit said that the confusion that results from the reassigning of DOT numbers could be avoided if glass manufacturers were required to apply their trade names to their products. FGMAJ suggested that a manufacturer who simply cuts sections of glazing for use in a motor vehicle application obtain a separate DOT code number from that of the prime glazing manufacturer who produces the glazing. Additionally, FGMAJ suggested that the definition of ''prime glazing manufacturer'' should specify the inclusion of aftermarket manufacturers.

E. Other Issues

1. Applicability of Proposal to MPVs

DC and SAE encouraged NHTSA not to delete paragraph S5.1.1.6 of FMVSS No. 205, which states that glazing intended for use in multipurpose passenger vehicles (MPVs) is treated identically to glazing used in trucks. ANSI/SAE Z26.1–1996 expressly prohibits the use of deep tinted windows adjacent to the driver in trucks but is silent with regard to tinting in MPVs.

2. Edge Treatment for Automotive Safety Glass

The SAE recommended that NHTSA eliminate paragraph S5.2 of FMVSS No. 205 because it incorporates by reference the edge treatment requirements (SAE Recommended Practice J673, ''Automotive Safety Glasses'') that are already incorporated by reference in ANSI/SAE Z26.1–1996.[10]

3. Labeling

Toyota suggested that FMVSS No. 205 specify that the cleaning instruction label currently required for Items 12, 13, 16A and 16B not be required for these items of glazing because these items of glazing are not required to meet the 70% light transmittance requirement (Test 2 of the ANSI standard). The NPRM proposed deleting S5.1.2.2 and S5.1.2.10, which contains cleaning instruction label requirements from FMVSS No. 205. Since ANSI/SAE Z26.1–1996 contains the cleaning instruction label requirements for the aforementioned Items, FMVSS No. 205 would incorporate them by reference.

4. Additional Tests

Sekurit expressed the view that additional tests, not included in ANSI/SAE Z26.1–1996, could have been added to FMVSS No. 205. These tests include a head-impact test for windshields (ISO 3537), a requirement for testing of optical properties of a windshield according to ISO 3538, and a mechanical strength test using a 227 g (0.5 lb.) ball at high and low temperatures. According to Sekurit, ISO 3538 takes windscreen design, rake angle, and field of vision into account while ANSI/SAE Z26.1–1996 tests optical properties by an obsolete method that does not take into account the current design of windshields. Additionally, Sekurit argued that a mechanical strength test using a 227 g (0.5 lb.) ball would more closely proximate real-life conditions than the strength test in ANSI.

[10] SAE Recommended Practice J673 provides several mechanical treatments that shape the edge of the finished glazing for either laminated glazing or tempered glass glazing. The intent of these treatments is to reduce the risk of a lacerative injury due to an exposed sharp edge or corner in the finished glazing product.

IV. Agency Discussion of Issues and Response to Comments

A. Summary of Changes from the NPRM

In response to the comments, the agency is modifying the approach it proposed in the NPRM. The major deviations from the proposal are summarized below.

- The fracture test of ANSI/SAE Z26.1–1996 is clarified to indicate that *any* piece of glazing subject to the fracture test may be tested, and that the test procedure is a single fracture origin or break point 25 mm (1 in.) inboard at the edge of the midpoint of the longest edge of the specimen as specified in ANSI/SAE Z26.1–1996.
- Shade band areas are required to conform with the SAE J100 recommended practice. However, a substitution of the ECE R43 procedure ''up angle'' of 7 degrees, instead of the SAE procedure ''up angle'' of 5 degrees, will be used to determine the upper limit of the area for driving visibility.

B. Meaning of the ''Most Difficult Part or Pattern'' for the Fracture Test

Currently, Fracture Test No. 7 specifies dropping a 227 g (0.5 lb) ball onto 305 mm × 305 mm (12 in. × 12 in.) laboratory samples of glazing. The drop height starts at ten feet and increases until the samples break. To pass the test, the largest fractured particle must weigh 4.3 g (0.15 oz.) or less.

The proposed fracture test in S5.7.2 specified six production parts representing each construction type model number. Fracture Test No. 7 stated, ''[T]he number of specimens selected from each model number of glazing shall be six (6) and shall all be of the *most difficult part or pattern* (emphasis added) designation within the model number.'' The fracture origin or break point is 25 mm (1 in.) inboard of the edge at the midpoint of the longest edge of the specimen. If the specimen has two long edges of equal length, the edge nearer the manufacturer's trademark is chosen. To obtain fracture, a spring loaded center punch or a hammer of about 75 g (2.65 oz.), each with a point having a radius

of curvature of 0.2 mm ± 0.05 mm (0.0008 in. ± 0.002 in.), is used. To pass the test, the largest fractured particle must weigh 4.3g (0.15 oz.) or less.

In the NPRM, NHTSA stated ''we believe that the phrase ''most difficult part or pattern'' was intended to mean the part of the glazing that provides for 'worst-case' testing.'' After consideration of the comments, NHTSA now agrees that this interpretation of the phrase was not the intent of the authors of ANSI/SAE Z26.1–1996. In the context of ANSI/SAE Z26.1–1996, as clarified by SAE in its comment to the NPRM, the ''most difficult part or pattern'' refers to the most difficult application or component with respect to the fracture performance for a given glazing model number. In other words, ANSI/SAE Z26.1 calls for fracture testing on the ''worst-case'' use, rather than on the worst case target area. It does not refer to the fracture location on a given piece of glazing, nor does it refer to the part of the glazing that provides for ''worst-case'' testing.

For the purposes of FMVSS No. 205, the phrase ''the most difficult part or pattern'' means the worst-case component with respect to fracture performance, not the worst-case test location on that component. The worst-case component could be picked from the grouping of such articles that are described by a common manufacturer's model number. For instance, using the example cited by SAE in its comments to the NPRM,[11] if a manufacturer produces side and rear windows with the same model number and the rear window performs worse in the fracture performance test, then the rear window must pass the fracture performance test. The difficulty referred to is in regard to meeting the particle weight requirement of the fracture test.

Sekurit suggested requiring multiple fracture points and other manufacturers have objected to conducting fracture testing on production parts with a single fracture origin or breakpoint 25 mm (1 in.) inboard at the edge of the midpoint of the longest edge of the specimen. They stated that the fracture test could be interpreted to have many fracture points. These manufacturers, however, have not demonstrated a safety need to deviate from the testing specified in ANSI/SAE Z26.1–1996. For this reason, NHSTA believes that the test procedures need not be revised at this time. However, as suggested by Sekurit, NHTSA will continue to explore the desirability of extending the test procedures to multiple break points in the future, through participation in the UN/ECE Working Party 29's Working Party on General Safety Provisions (GRSG).

In retaining the ''most difficult part or pattern'' requirement, NHTSA agrees with the SAE and has decided to clarify that *any* piece of glazing subject to the fracture test may be tested, and that the test procedure will be a single fracture origin or break point 25 mm (1 in.) inboard at the edge of the midpoint of the longest edge of the specimen as specified in ANSI/SAE Z26.1–1996.

C. Xenon Light Source for the Weathering Test

As noted above, Ford and SAE concurred with the agency's tentative conclusion that a xenon arc produces a spectral power distribution closer to that of sunlight than carbon arc lamps and that it is an improved light source for the weathering tests. As in the NPRM, we also note that most of the testing industry is currently using xenon arc lamp test devices to simulate weathering. For these reasons, the agency has decided to adopt the use of the xenon arc lamp test device for the weathering tests as specified in ANSI/SAE Z26.1–1996.

D. Limiting the Width of the Shade Band

In response to comments by DaimlerChrysler, Toyota, and FGMAJ, NHTSA commissioned a study at General Test Laboratories (GTL) of current industry practices (SAE J100 and ECE R43) concerning shade band areas.[12]

As a preliminary matter, NHTSA collected data for a series of five windshields from current production vehicles to evaluate the lower boundary of actual windshield shade bands in comparison to the SAE J100 recommendations. The vehicle manufacturers supplied full size templates for each windshield. On these templates, NHTSA engineers measured the difference between the AS–1 line and the boundary of the shade band zone defined in Section 4.1 of SAE J100 for forward glazing (J100 line). The boundary value for the upper limit of level of visibility in SAE J100 is defined as the intersection of the windshield's centerline with an inclined plane tangent to the upper edge of the 95th eyellipse. The AS–1 line marked on the upper edge of the windshield equipped with a shade band shows the current shade band practice by the manufacturer.[13] NHTSA's limited survey of vehicles found that the manufacturer-provided shade bands did not extend as far downward as permitted by SAE J100, and the distance between the lower boundary of the shade bands and the boundary limit recommended in SAE J100 ranged from 45 mm (1.8 in.) for the Chevrolet Camaro to about 191 mm (7.5 in.) for the Pontiac Grand Am (Table 1). Based on these measurements, all vehicles tested exceeded the recommendations set forth in SAE J100.

Next, NHTSA determined the extent to which the ECE R43 requirement (ECE R43 line) was exceeded. It then compared the extent to which the ECE R43 line was exceeded with the extent to which the J100 line was exceeded. These comparisons are shown in Table 1.

TABLE 1.—COMPARISON OF ESTIMATED SHADE BAND COMPLIANCE WITH SAE J100 AND ECE–R43

Manufacturer	Model	(a) AS–1 line, SAE exceedance*, inches	Pass SAE J100?	(b) AS–1 line, ECE–R43 exceedance*, inches	Pass ECE 43?
General Motors	Chevrolet Camaro	1.8	Yes	–0.8	No
General Motors	Saturn LS2	4	Yes	2.4	Yes
General Motors	Pontiac Grand Am	7.5	Yes	5	Yes
Mitsubishi	Galant	N/A**	N/A**	N/A**	N/A**

[11] Docket No. NHTSA–99–6024–10.

[12] GTL is a test facility used by NHTSA to evaluate vehicle equipment for compliance with the FMVSSs.

[13] FMVSS No. 205 requires that manufacturers mark the windshields to show the limits of the area having a luminous transmittance of less than 70%. For example, if a manufacturer chooses to install a shade band at the upper edge of the windshield, the windshield must be permanently marked with a line indicating the line of demarcation. An arrow and ''AS–1'' must also be marked on the glazing which points to the area compliant with the visibility requirements [minimum level of light transmittance required for a windshield in the area indicated by the direction of the arrow] of FMVSS No. 205.

TABLE 1.—COMPARISON OF ESTIMATED SHADE BAND COMPLIANCE WITH SAE J100 AND ECE–R43—Continued

Manufacturer	Model	(a) AS–1 line, SAE exceedance*, inches	Pass SAE J100?	(b) AS–1 line, ECE–R43 exceedance*, inches	Pass ECE 43?
Ford	Focus	6.1	Yes	4.3	Yes

* Linear distance measured on the windshield surface between the location of the AS–1 line indicated on the windshield and the lowest allowable AS–1 line in accordance with SAE J100 or ECE R43. A positive value indicates that the AS–1 line lies above the lowest allowable AS–1 line. A negative value indicates noncompliance with the requirement, *i.e.*, it represents a hypothetical test failure.
** Not applicable. There was no AS–1 line on the windshield because it had no shade band.

As demonstrated in Table 1, not all tested vehicles comply with ECE R43, and differing results occur for the SAE J100 procedure and the ECE R43 procedure. The SAE procedure uses an ''up angle'' of 5 degrees to determine the lower limit of the shade band area and the ECE R43 procedure uses an ''up angle'' of 7 degrees to determine the upper limit of the area for driving visibility. Other minor factors distinguish the SAE method from the ECE method, but these differences are due only to the method by which the point of origin for the 5 degree and 7 degree lines is established.[14]

As stated in the NPRM, NHTSA believes that establishing a lower boundary for windshield shade bands is a necessary component of the amended glazing standard. Further, no negative comments were received on the proposal to institute a requirement for the lower boundary for a shade band on a windshield.

The net safety benefit from the slight differences in allowable shade band design between SAE J100 and ECE R43 is negligible. While the SAE procedure offers slightly greater glare protection, the ECE R43 procedure allows a greater daylight opening for visibility at luminous transmittance values of 70% or greater. NHTSA believes that the approaches set forth in both ECE R43 and SAE J100 represent reasonable approaches to determining the limits of a windshield shade band.

However, each procedure is dependent upon the location of a seating design point defined by the vehicle manufacturer. The ECE method relies upon the location of the European ''R-point'' whereas the SAE method relies upon the SAE seating reference point (SgRP). Due to the existence of only slight technical differences between the two methods and the use of SgRP in other FMVSS, NHTSA has decided to adopt the SAE J100 recommended practice. This adoption includes, however, a substitution of the ECE R43 procedure ''up angle'' of 7 degrees, instead of the SAE procedure ''up angle'' of 5 degrees, to determine the upper limit of the area for driving visibility.

Using the 7 degree ''up angle'' method for determining the location of the AS–1 line increases the total windshield visibility. Additionally, manufacturers that presently manufacture their shade bands in accordance with SAE J100 can continue using the same testing conditions and procedures defined in SAE J100, except for the ''up angle.'' However, due to the substantial similarity between the provisions of SAE J100 and ECE R43, except for the degree of the ''up angle,'' the agency anticipates the shade band boundary line under the new rule would more closely approximate the ECE R43 line due to the 7 degree ''up angle'' for most vehicles. Therefore, we believe manufacturers would be able to market vehicles with the same AS–1 line in both Europe and the United States.

Agency testing indicates that most manufacturers do not use all of the potential available windshield shade band area available under ECE R43 for shade band coverage. However, as demonstrated above in Table 1, not all tested vehicles complied with ECE R43 (one out of four did not comply). Therefore, a small percentage of current production vehicles may not comply with the new shade band requirement. However, as with the 2000 Chevrolet Camaro, the anticipated extent of failure for this small percentage of vehicles is slight. The agency believes that modifying the shade band location by 25 mm (1 inch) or less on most vehicles represents a reasonable undertaking that should not be costly for manufacturers and that can be accomplished within a short lead time. Based on the results of the agency's testing, manufacturers should have no difficulty adjusting shade bands to meet the new requirement.

With regard to shade band requirements for glazing areas other than the upper edge of the windshield, SAE J100 does not address driver visibility for the bottom edge of the windshield or for the side of the windshield. SAE J100 does include shade band requirements for fixed side and rear windows. While SAE J100 includes this requirement for side and rear windows, the majority of side and rear windows are tempered glass. Shade bands can only be applied to laminated glazing (by tinting the inner layer). Laminated glazing is required only for windshield applications. Therefore, shade bands rarely exist on fixed side and rear windows. Further, ECE R43 does not contain shade band requirements for side or rear windows. Because of the limited number of fixed side and rear windows containing shade bands and because of harmonization concerns, as commented by FGMAJ, the agency has decided to apply the provisions of SAE J100 exclusively to windshield applications. However, the light transmittance requirements for side and rear windows contained in FMVSS No. 205 and ANSI/SAE Z26.1–1996 will continue to apply to side and rear windows.

E. Certification and Verification of DOT Numbers

Comments concerning the certification and verification of DOT numbers suggest that NHTSA's DOT registry process should require additional certification and verification activities such as the re-certification of numbers every 5 years and the maintenance of active and non-active manufacturer lists. Commenters did not, however, provide evidence that the additional certification and verification activities would yield safety benefits. Further, the agency believes that additional certification and verification activities would require additional resources and manpower which would, in turn, adversely impact the agency's use of its resources to upgrade its safety

[14] The test zones used by each standard are generated using different methods. The European test zone uses the ISO ''V'' points (coordinates related to seat back angle) while the U.S. zones are based on the SAE J941 eyellipse. However, the ISO ''V'' points are a derivative of the SAE eyellipse, and generate substantially similar zones. While the zones are not identical, the differences in practice account for only slight variations in calculated outcomes.

standards. Due to the absence of apparent safety benefits and because additional registry and certification activities would detract resources from its safety mission, the agency is not amending the current DOT registry process at this time.

As stated above, FGMAJ suggested that a manufacturer who cuts glazing should be required to obtain a separate DOT code number from the one used by the prime glazing manufacturer who produces the glazing. NHTSA is unaware of any safety benefits associated with this suggestion. Additionally, this suggested action would create an additional resource burden for the agency.[15] Therefore, NHTSA is not adopting the suggested requirement. NHTSA, however, is aware of the need for clarification regarding certification responsibilities and is adopting the language proposed in the NPRM for S6 of FMVSS No. 205. This revised section provides a more straightforward and clearer statement of the certification and marking responsibilities of a manufacturer who fabricates, laminates, or tempers glazing material and distinguishes those responsibilities from those of a manufacturer who cuts a section of glazing material for subsequent use in a motor vehicle application. This text also makes clear that the requirement to affix a manufacturer's code mark to the glazing applies only to the prime glazing manufacturer[16] and not to a manufacturer or distributor who simply cuts a piece of glazing.

The proposed regulatory text in the NPRM included a definition of ''prime glazing manufacturer'' as ''a manufacturer that fabricates, laminates, or tempers glazing materials.'' FGMAJ commented that this definition should also include a reference to aftermarket manufacturers. The agency considers it unnecessary to add a reference to aftermarket manufacturers in the definition of ''prime glazing manufacturer.'' FMVSS No. 205 applies to all glazing for use in motor vehicles, whether it is supplied as original equipment in a vehicle or as an aftermarket product. Besides this suggestion by FGMAJ, the agency received no other comments concerning the definition of ''prime glazing manufacturer.'' Therefore, the agency has decided to adopt the definition of ''prime glazing manufacturer'' as proposed in the NPRM.

D. Other Issues

1. Applicability of Standard to MPVs

Today's rule retains S5.1.1.6 in the regulatory text of FMVSS 205. Paragraph S5.1.1.6 ensures that MPVs must meet the same glazing requirements as those required for trucks. NHTSA agrees with DC and SAE that the requirements for glazing to be used in trucks should be applied to glazing for use in MPVs. This approach of applying identical requirements to both trucks and MPVs is consistent with the treatment of trucks and MPVs in past interpretations (57 FR 2496; 63 FR 37820).

2. Edge Treatment for Automotive Safety Glass

NHTSA agrees with SAE that the requirements of S5.2 of FMVSS No. 205 are redundant with the edge treatment provisions of Section 6 of ANSI/SAE Z26.1–1996, which requires that exposed edges in vehicles other than school buses shall be treated in accordance with SAE J673 (April 1993 version) and that exposed edges in school buses shall be banded. Section 6 of ANSI/SAE Z26.1–1996 is identical to the current requirements for edge treatment in FMVSS No. 205, except that FMVSS No. 205 incorporates by reference an outdated (1967) version of SAE J673. Due to the redundancy between FMVSS No. 205 and ANSI/SAE Z26.1–1996 concerning the requirements for edge treatment and because ANSI/SAE Z26.1–1996 contains a more recent version of SAE J673, the agency will delete S5.2 from FMVSS No. 205 and revise the regulatory text accordingly.

3. Labeling

Toyota has requested that FMVSS No. 205 state that the cleaning instruction label requirement in ANSI/SAE Z26.1–1996 is not applicable to Items 12, 13, 16A and 16 B. With the deletion of S5.1.2.2 and S5.1.2.10, the cleaning instruction requirements for these items would be found in ANSI/SAE Z26.1–1996.

Toyota is correct that Items 12, 13, 16A and 16B are not required to meet the light transmittance test in ANSI/SAE Z26.1–1996. However, ANSI/SAE Z26.1–1996 does include tests, *e.g.*, the weathering test, which ensure that they maintain a luminous transmittance that closely approximates the transmittance found in their original manufactured state. This indicates to NHTSA that, while Items 12, 13, 16A and 16B need not meet the 70% light transmittance test, it is important for these items of glazing to maintain a luminous transmittance which is achieved, in part, by proper maintenance and cleaning indicated on the cleaning instruction label on the glazing. Additionally, ANSI/SAE Z26.1–1996 provides manufacturers with the option of placing cleaning instructions in the vehicle's owner's manual rather than on a label affixed to the glazing for Items 16A and 16B. The agency believes that the option of placing the cleaning instructions in the owner's manual rather than on a cleaning instruction label on the glazing partially alleviates Toyota's concern.

4. Additional Tests

As discussed above, Sekurit suggested that the agency incorporate additional tests for head impact into windscreens, optical properties, and mechanical strength into FMVSS No. 205. Currently, the agency, through participation in GRSG meetings on the proposed Global Glazing Regulation, is evaluating the tests recommended by Sekurit. If NHTSA tentatively concludes that these tests would have a safety benefit, the agency may propose adoption of one or more of these tests in a future rulemaking.

V. Effective Date

The agency proposed a leadtime of 45 days. AP Technoglass, a glazing manufacturer, commented that the new requirements, including shade band, glass fracture test, and weathering test requirements, may affect glazing currently under production that does not conform to the new requirements. For instance, manufacturers may need to purchase new equipment to perform the weathering test with a xenon arc lamp. NHTSA agrees that these new requirements may take longer than 45 days to incorporate. In NHTSA's judgment, these changes can be accomplished within 180 days. Consequently, the changes to FMVSS No. 205 will become effective, and compliance will be required, 180 days following the publication of the final rule. However, manufacturers may voluntarily comply with this rule earlier.

VI. Plain Language

In accordance with Executive Order 12866, we have rewritten or reorganized portions of the regulatory text for clarity and conformance to Plain Language practices. These include portions of the regulatory text that are not being

[15] The Automotive Manufacturers Equipment Compliance Agency (AMECA) and AP Technoglass Company estimate that there are in excess of 700 prime glazing manufacturers. They further estimate that the number of manufacturers that cut glass is the same or slightly more than the number of prime glazing manufacturers.

[16] A ''prime glazing manufacturer'' is defined as one who ''fabricates, laminates, or tempers the glazing material.''

substantively changed by this rule. For example, we have replaced passive verbs with active verbs, replaced ''shall'' with ''must,'' and made explicitly clear who has the responsibility for acting.

Rewriting is especially apparent in the certification and marking requirements of section 6. We eliminated the marking requirement of former S6.1 because it is already incorporated in section 7 of ANSI/SAE Z26.1–1996. We moved the definition of prime glazing manufacturer in S6.1 into the S4 definitions section. To eliminate redundancy, former S6.2 and S6.3 have been combined in S6.1, and former S6.4 and S6.5 have been combined in S6.3. We do not intend by this rule to make any substantive changes in S6.

VII. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. The rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action is to clarify existing requirements. It will not impose any additional burden upon any person. Impacts of the final rule are, therefore, so minimal that preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

We have considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule affects manufacturers of motor vehicles and motor vehicle glazing. According to the size standards of the Small Business Association (at 13 CFR part 121.601), manufacturers of glazing are considered manufacturers of ''Motor Vehicle Parts and Accessories'' (SIC Code 3714). The size standard for SIC Code 3714 is 750 employees or fewer. The size standard for manufacturers of ''Motor Vehicles and Passenger Car Bodies'' (SIC Code 3711) is 1,000 employees or fewer. This Final Rule will not have any significant economic impact on a small business in these industries because it makes no significant substantive change to requirements currently specified in FMVSS No. 205. Small organizations and governmental jurisdictions that purchase glazing will not be significantly affected because this rulemaking will not cause price increases. Accordingly, we have not prepared a Regulatory Flexibility Analysis.

Federalism

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''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, we may not issue a regulation with 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 unless we consult with State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule will 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, as specified in Executive Order 13132. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

Civil Justice Reform

This rule does not have any retroactive effect. According to 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

National Technology and Transfer and Advancement Act of 1995 (NTTAA)

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Certain technical standards developed by the American National Standards Institute (ANSI) and Society of Automotive Engineers (SAE) have been considered and incorporated by reference in the formulation of these requirements.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. NHTSA has reviewed this proposal and determined that it does not contain collection of information requirements.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

VIII. Regulatory Text

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.205 is amended by:
■ a. Revising paragraph S3,
■ b. Amending S4 by adding a new definition in alphabetical order,
■ c. Revising paragraph S5.1,
■ d. Revising paragraph S5.2,
■ e. Adding paragraph S5.3,
■ f. Adding paragraph S5.4,
■ g. Revising paragraphs S6.1 through S6.3,
■ h. Removing paragraphs S6.4 and S6.5, and

■ i. Removing Figure 1, at the end of the section.

The additions and revisions read as follows:

§ 571.205 Standard No. 205, Glazing materials.

* * * * *

S3. *Application and Incorporation by Reference.*

S3.1 *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, slide-in campers, pickup covers designed to carry persons while in motion, and low speed vehicles, and to glazing materials for use in those vehicles.

S3.2 *Incorporation by Reference.*

(a) ''American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways-Safety Standard'' ANSI/SAE Z26.1–1996, Approved by American National Standards Institute August 11, 1997 (ANSI/SAE Z26.1–1996) is incorporated by reference in Section 5.1 and is hereby made part of this Standard. The Director of the Federal Register approved the material incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (*see* § 571.5 of this part). A copy of ANSI/SAE Z26.1–1996 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0007. A copy of ANSI/SAE Z26.1–1996 may be inspected at NHTSA's technical reference library, 400 Seventh Street, SW., Room 5109, Washington, DC or at the Office of the Federal Register, 900 North Capitol Street, NW., Suite 700, Washington, DC.

(b) The Society of Automotive Engineers (SAE) Recommended Practice J673, revised April 1993, ''Automotive Safety Glasses'' (SAE J673, rev. April 93) is incorporated by reference in Section S5.1, and is hereby made part of this Standard. The Director of the Federal Register approved the material incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (*see* § 571.5 of this part). A copy of SAE J673, rev. April 93 may be obtained from SAE at the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of SAE J673, rev. April 93 may be inspected at NHTSA's technical reference library, 400 Seventh Street, SW., Room 5109, Washington, DC, or at the Office of the Federal Register, 900 North Capitol Street, NW., Suite 700, Washington, DC.

(c) The Society of Automotive Engineers (SAE) Recommended Practice J100, revised June 1995, ''Class 'A' Vehicle Glazing Shade Bands'' (SAE J100, rev. June 95) is incorporated by reference in Section S5.3, and is hereby made part of this Standard. The Director of the Federal Register approved the material incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (*see* § 571.5 of this part). A copy of SAE J100, rev. June 95 may be obtained from SAE at the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of SAE J100, rev. 95 may be inspected at NHTSA's technical reference library, 400 Seventh Street, SW., Room 5109, Washington, DC, or at the Office of the Federal Register, 900 North Capitol Street, NW., Suite 700, Washington, DC.

S4. *Definitions.*

* * *

Prime glazing manufacturer means a manufacturer that fabricates, laminates, or tempers glazing materials.

* * * * *

S5. *Requirements.*

S5.1 Glazing materials for use in motor vehicles must conform to ANSI/SAE Z26.1–1996 unless this standard provides otherwise.

S5.2 NHTSA may test any portion of the glazing when doing the fracture test (Test No. 7) described in section 5.7 of ANSI/SAE Z26.1–1996.

S5.3 *Shade bands.* Shade band areas for windshields shall comply with SAE J100, rev. June 95 except that the value of 7 degrees must be used in place of the value of 5 degrees specified in Section 4, Shade Band Boundary Requirements, of SAE J100, rev. June 95.

S5.4 *Low speed vehicles.* Windshields of low speed vehicles must meet the ANSI/SAE Z26.1–1996 specifications for either AS–1 or AS–4 glazing.

S6. *Certification and marking.*

S6.1 A prime glazing material manufacturer must certify, in accordance with 49 U.S.C. 30115, each piece of glazing material to which this standard applies that is designed—

(a) As a component of any specific motor vehicle or camper; or

(b) To be cut into components for use in motor vehicles or items of motor vehicle equipment.

S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1–1996, in letters and numerals of the same size, the symbol ''DOT'' and a manufacturer's code mark that NHTSA assigns to the manufacturer. NHTSA will assign a code mark to a manufacturer after the manufacturer submits a written request to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The request must include the company name, address, and a statement from the manufacturer certifying its status as a prime glazing manufacturer as defined in S4.

S6.3 A manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, must—

(a) Mark that material in accordance with section 7 of ANSI/SAE Z26.1–1996; and

(b) Certify that its product complies with this standard in accordance with 49 U.S.C. 30115.

■ 3. Section 571.500 is amended by revising paragraph (b)(8) of S5, to read as follows:

§ 571.500 Standard No. 500; Low-speed vehicles.

S5. *Requirements*

* * * * *

(b) * * *

(8) A windshield that conforms to the Federal motor vehicle safety standard on glazing materials (49 CFR 571.205).

* * * * *

Issued on: July 21, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–18924 Filed 7–24–03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–15505]

NHTSA Vehicle Safety Rulemaking and Supporting Research: Calendar Years 2003–2006

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Vehicle safety rulemaking priorities document; notice of availability.

SUMMARY: This document announces the availability of a planning document that describes NHTSA's vehicle safety rulemaking priorities with supporting research through 2006. The plan includes those rulemaking actions of highest priority for the period 2003 to 2006, based primarily on the greatest potential protection of lives and prevention of injury, that fall within the immediate four-year time frame. In

addition, NHTSA has considered the realistic likelihood for successful action, especially considering the reality of numerous worthwhile options competing for budgetary resources. The priorities were defined through extensive discussions within the agency, taking into account the views heard in recent years at public meetings and comments submitted to the agency via rulemaking notices and requests for comment. In addition, comments submitted by the public in response to a Request for Comments announcing the draft of this plan on July 25, 2002 (Docket No. NHTSA–2002–12391) were evaluated and incorporated, as appropriate, into the planned agency activities. The results produced by previous NHTSA rulemaking priority planning exercises also provided input to this process. While the plan includes other active areas, in addition to the rulemaking priorities, it discusses only a portion of all rulemaking actions the agency has begun or plans to undertake in the four-year period. The absence of a particular regulatory or research activity from the plan does not necessarily mean that the agency will not pursue it. Although the execution of a priority plan is affected by factors beyond its control (*e.g.*, petitions, budgets, legislation), this plan provides a blueprint for regulatory action on those vehicle safety goals the agency considers its highest priorities.

ADDRESSES: Interested persons may obtain a copy of the planning document by downloading a copy of the document from the Docket Management System, U.S. Department of Transportation, at the address provided below, or from NHTSA's Web site at *http://www.nhtsa.dot.gov/cars/rules/rulings.* Alternatively, interested persons may obtain a copy of the document by contacting the agency officials listed in the section titled, ''For Further Information Contact,'' immediately below.

The Docket Management System is located on the Plaza level of the Nassif Building at the U.S. Department of Transportation, PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Docket Management System Web site at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lawrence L. Hershman, Office of Rulemaking, NVS–133, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4929. E-mail: *lhershman@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: Motor vehicle crashes killed more than 42,000 individuals and injured 2.9 million others in six million crashes in 2001. In addition to the terrible personal toll, these crashes make a huge economic impact on our society with an estimated annual cost of $230.6 billion, or an average of $820 for every person living in the United States. One of the most important ways in which NHTSA carries out its safety mandate is to issue and enforce Federal Motor Vehicle Safety Standards (FMVSS). Through these rules, NHTSA strives to reduce the number of crashes and to minimize the consequences of those crashes that do occur. NHTSA's rulemaking activities, via the Rulemaking Program with support from the offices of Applied Research, Enforcement, Planning, Evaluation and Budget, Advanced Research and Analysis, and Chief Counsel, identify safety problem areas, develop countermeasures, and collect and analyze information to develop new FMVSS and amendments to existing FMVSS.

As we continue into the new century, NHTSA will strive to influence the automotive industry to incorporate the rapidly accelerating pace of advances in vehicle and safety technology into new vehicles while ensuring that the use of the new technologies enhances vehicle safety. The plan outlines the highlights of NHTSA's vehicle safety rulemaking plans through 2006. Agency priorities emanate from many sources, including: the size of the safety problem and likelihood of solutions, Executive initiatives, Congressional interest and mandates, petitions to the agency for rulemaking and other expressions of public interest, interest in harmonizing safety standards with those of other nations, and changes needed as a result of new vehicle technologies. The starting point for rulemaking priorities is the quest for the greatest potential protection of lives and prevention of injury.

The plan is organized along several broad categories: Crash Prevention includes crash avoidance data, driver distraction, vehicle visibility, crash warnings, and vehicle control and handling. Occupant Protection includes protection in frontal, side, rollover, and rear crashes. Other sections cover Incompatibility Between Passenger Cars and Light Trucks, Heavy Truck Safety, and Protecting Special Populations, including safety for children, people with disabilities, and older people.

The plan includes several potential rulemaking projects that require additional research to determine whether rulemaking action is needed, but are priorities based on their potential for significantly sizeable death and injury prevention benefits. The plan also contains an appendix that discusses some other regulatory activities that the agency considers important, although not rising to the same level of immediate high priority as the activities included in the main body of the plan. Another appendix discusses upcoming milestones in consumer information activities that the agency plans to pursue in the next few years, including the New Car Assessment Program (NCAP).

This document announces the availability of the document to the public. Received comments on the draft plan were evaluated and incorporated, as appropriate, into planned agency activities. Comments that could not be accommodated in the current plan will be considered in the context of future updates.

The plan will be posted on NHTSA's Web site on July 21, 2003. The agency intends to periodically update the plan.

You may also see the plan on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

2. On that page, click on ''search.''

3. On the next page (*http://dms.dot.gov/search/*) type in the five-digit Docket number shown at the beginning of this document (NHTSA–2003–15505). Click on ''search.''

4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired document. You may also download the document.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18914 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030514123–3162–02; I.D. 041003B]

RIN 0648–AQ76

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38 to the Northeast Multispecies Fishery Management Plan; Correcting Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS issued a final rule to implement measures contained in Framework Adjustment 38 (Framework 38) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to exempt a fishery from the Gulf of Maine (GOM) Regulated Mesh Area mesh size regulations. The final rule implementing Framework 38 was published in the **Federal Register** on July 9, 2003. One of the coordinates contained in the Gulf of Maine (GOM) Grate Raised Footrope Trawl Whiting Fishery Exemption Area table is incorrect. This document corrects that error.

DATES: This regulation is effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

Need for the Correction

The final rule implementing measures contained in Framework 38 to the FMP was published in the **Federal Register** on July 9, 2003 (68 FR 40810), and became effective on the date of publication. The North Latitude coordinate for Point GRF5 (44° 58.5′) in the table, GOM Grate Raised Footrope Trawl Whiting Fishery Exemption Area, contained in § 648.80(a)(16), is incorrect. The correct North Latitude coordinate for Point GRF5 is 43° 58.8′.

When the Council voted to include the ocean area adjacent to the original experimental fishery area because of its similarity to the area in which the experimental fishery took place, it incorrectly listed the GRF5 decimal point reference as 44.98 N. Latitude in the EA. This point reference should have been 43.98 N. Latitude, which converts to the geographic coordinates equivalent of 43 58.8'. While substitution of the correct geographic coordinates for Point GRF5 does not change the seaward boundaries of the fishing area, it removes the erroneous landward extension of the fishing area north from the shoreline.

Therefore, because the final rule published on July 9, 2003, which was the subject of FR Doc. 03–17106, contained an incorrect coordinate in the table contained in § 648.80(a)(16), on page 40810, in the third column, in the table contained in § 648.80(a)(16), second column under ''N. Lat.'', the last coordinate, ''44° 58.5′'' is removed, and in its place ''43° 58.8′'' is added.

This document corrects the table under § 648.80(a)(16) as follows:

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, 50 CFR part 648 is correctly amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for 50 CFR part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.80, the table contained in paragraph (a)(16) is corrected to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(16) * * *

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(July 1 through November 30)

Point N.	Lat.W.	Long.
GRF1	43° 15′	70° 35.4′
GRF2	43° 15′	70° 00′
GRF3	43° 25.2′	70° 00′
GRF4	43° 41.8′	69° 20′
GRF5	43° 58.8′	69° 20′

* * * * *

Dated: July 18, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–18894 Filed 07–24–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 143
Friday, July 25, 2003

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV03–922–1 PR]

Increased Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rates established for the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Committee (Committees) for the 2003–2004, and subsequent fiscal periods. This rule would increase the assessment rates established for the Committees from $2.50 to $3.00 per ton for Washington apricots, from $0.75 to $1.00 per ton for Washington sweet cherries, and $1.00 to $1.50 per ton for Washington-Oregon fresh prunes. The Committees are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period for these marketing orders begins April 1 and ends March 31. The assessment rates would remain in effect indefinitely unless modified, suspended or terminated.

DATES: Comments must be received by August 11, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Agreement and Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the Aorders.'' The orders are 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. Under the marketing orders now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as proposed herein would be applicable to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes beginning April 1, 2003, and continue until amended, suspended, or terminated. This rule 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. Such 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 rule would increase the assessment rates established for the Committees for the 2003–2004 and subsequent fiscal periods from $2.50 to $3.00 per ton for Washington apricots, from $0.75 to $1.00 per ton for Washington sweet cherries, and $1.00 to $1.50 per ton for Washington-Oregon fresh prunes.

The orders provide authority for the Committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public

meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–2003 and subsequent fiscal periods, the Washington Apricot Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington Apricot Marketing Committee met on May 21, 2003, and unanimously recommended 2003–2004 expenditures of $10,559 and an assessment rate of $3.00 per ton of apricots. In comparison, last year's budgeted expenditures were $11,685. The assessment rate of $3.00 is $0.50 higher than the rate currently in effect. The increase is necessary to offset an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2003 apricot crop.

The assessment rate recommended by the Washington Apricot Marketing Committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Applying the $3.00 per ton rate of assessment to the Washington Apricot Marketing Committee's 3,600 ton shipment estimate should provide $10,800 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses and allow the Apricot Committee to maintain an acceptable financial reserve. Funds in the reserve ($8,360 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 922.42).

For the 1997–98 and subsequent fiscal periods, the Washington Cherry Marketing Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington Cherry Marketing Committee met on May 22, 2003, and unanimously recommended 2003–2004 expenditures of $71,865 and an assessment rate of $1.00 per ton of cherries. In comparison, last year's budgeted expenditures were $68,715. The assessment rate of $1.00 is $0.25 higher than the rate currently in effect. The higher assessment rate is necessary to offset an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2003 cherry crop.

The assessment rate recommended by the Washington Cherry Marketing Committee was derived by dividing anticipated expenses by expected shipments of sweet cherries grown in designated counties in Washington. Applying the $1.00 per ton rate of assessment to the Washington Cherry Marketing Committee's 64,000-ton shipment estimate should provide $64,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve ($33,064 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 923.42).

For the 2001–2002 and subsequent fiscal periods, the Washington-Oregon Fresh Prune Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington-Oregon Fresh Prune Marketing Committee met on June 3, 2003, and unanimously recommended 2003–2004 expenditures of $7,411 and an assessment rate of $1.50 per ton of prunes. In comparison, last year's budgeted expenditures were $8,095. The assessment rate of $1.50 is $0.50 higher than the rate currently in effect. The higher assessment rate is necessary to bring the assessment rate closer to budgeted expenses, and to use less of the reserve to fund expenses.

The assessment rate recommended by the Washington-Oregon Fresh Prune Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington, and Umatilla County, Oregon. Applying the $1.50 per ton rate of assessment to the Washington-Oregon Fresh Prune Marketing Committee's 4,300-ton shipment estimate should provide $6,450 in assessment income. Income derived from handler assessments, along with funds from the Washington-Oregon Fresh Prune Marketing Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve ($5,407 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 924.42).

All three Committees are managed from the same office, and as such, major expenses recommended by the Committees for the 2003–2004 year include salaries ($54,500), rent and maintenance ($7,200), compliance officer ($4,840), and Committee travel and compensation ($4,000). Budgeted expenses for these items in 2002–2003 were $49,100, $6,800, $5,120, and $6,100, respectively.

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although the assessment rates would be in effect for an indefinite period, the Committees would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of the Committees' meetings are available from the Committees or USDA. The Committees' meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking would be undertaken as necessary. The Committees' 2003–2004 budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial 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 rule on small entities. Accordingly, AMS has prepared this initial 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 the 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 272 Washington apricot producers, 1,800 Washington sweet cherry producers, and 215 Washington-Oregon fresh prune producers in the respective production areas. In addition, there are approximately 28 Washington apricot

handlers, 69 Washington sweet cherry handlers, and 10 Washington-Oregon fresh prune handlers subject to regulation under the respective marketing orders. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh apricot production of 4,225 tons (Washington Apricot Marketing Committee records), a three-year average producer price of $893 per ton as reported by National Agricultural Statistics Service (NASS), and 272 Washington apricot producers, the average annual producer revenue is approximately $13,871. In addition, based on Washington Apricot Marketing Committee records and 2002 f.o.b. prices ranging from $12.50 to $16.50 per 24-pound container as reported by USDA's Market News Service (MNS), all of the Washington apricot handlers ship under $5,000,000 worth of apricots.

Based on a three-year average fresh cherry production of 71,220 tons (Washington Cherry Marketing Committee records), a three-year average producer price of $1,857 per ton as reported by NASS, and 1,800 Washington cherry producers, the average annual producer revenue is approximately $73,475. In addition, based on Washington Cherry Marketing Committee records and an average 2002 f.o.b. price of $28.00 per 20-pound container as reported by MNS, 81 percent of the Washington cherry handlers ship under $5,000,000 worth of cherries.

Based on a three-year average fresh prune production of 4,893 tons (Washington-Oregon Fresh Prune Marketing Committee records), a three-year average producer price of $210 per ton as reported by NASS, and 215 Washington-Oregon prune producers, the average annual producer revenue is approximately $4,779. In addition, based on Washington-Oregon Fresh Prune Marketing Committee records and 2002 f.o.b. prices ranging from $8.50 to $9.50 per 30-pound container as reported by MNS, all of the Washington-Oregon prune handlers ship under $5,000,000 worth of prunes.

In view of the foregoing, the majority of Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule would increase the assessment rates established for the Committees from $2.50 to $3.00 per ton for apricots, from $0.75 to $1.00 per ton for cherries, and from $1.00 to $1.50 per ton for prunes. For the 2003–2004 fiscal period, the quantity of assessable fruit is estimated at 3,600 tons for apricots, 64,000 tons for cherries, and 4,300 tons for prunes.

All three Committees are managed from the same office, and as such, major expenses recommended by the Committees for the 2003–2004 year include salaries ($54,500), rent and maintenance ($7,200), compliance officer ($4,840), and Committee travel and compensation ($4,000). Budgeted expenses for these items in 2002–2003 were $49,100, $6,800, $5,120, and $6,100, respectively.

The higher assessment rates are necessary to offset increases in salaries and rent and maintenance, and projected decreases in the production of each crop due to the adverse effect of cooler temperatures on the size and quality of the fruit. The additional assessment income would also permit the Washington Apricot Marketing Committee and the Washington-Oregon Fresh Prune Committee to meet budgeted expenses and maintain an acceptable financial reserve. For the Washington Cherry Marketing Committee, the increased assessment rate would allow it to use less reserve funds to meet its budgeted expenses.

The Committees discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs with adequate reserves.

Apricot shipments for 2003 are estimated at 3,600 tons, which should provide $10,800 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Funds in the reserve ($8,360 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 923.42).

Sweet cherry shipments for 2003 are estimated at 64,000 tons, which should provide $64,000 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve ($33,064 as of March 31, 2003) would be kept within the maximum permitted by the order (one fiscal period's operational expenses; § 923.42).

Fresh prune shipments for 2003 are estimated at 4,300 tons, which should provide $6,450 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve ($5,407 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 924.42).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2003–2004 season could range between $783 and $1,050 per ton for Washington apricots, between $1,580 and $2,000 per ton for Washington sweet cherries, and between $166 and $252 per ton for Washington-Oregon fresh prunes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.29 and 0.38 percent for Washington apricots, between 0.05 and 0.06 percent for Washington sweet cherries, and between 0.60 and 0.90 for Washington-Oregon fresh prunes.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune industries and all interested persons were invited to attend and participate in the Committees' deliberations on all issues. Like all meetings of these Committees, the May 21, May 22, and June 3 meetings were public meetings and all entities, both large and small, were able to express views on the issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Washington apricot, Washington sweet cherry, or Washington-Oregon fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: *http://www.ama.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.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period began on April 1, and the marketing orders require that the rate of assessment for each fiscal period apply to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes handled during such fiscal period; (2) the Committees need to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by each of the Committees at public meetings and are similar to other assessment rate actions issued in past years.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2003, an assessment rate of $3.00 per ton is established for the Washington Apricot Marketing Committee.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. Section 923.236 is revised to read as follows:

§ 923.236 Assessment rate.

On or after April 1, 2003, an assessment rate of $1.00 per ton is established for the Washington Cherry Marketing Committee.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

4. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On or after April 1, 2003, an assessment rate of $1.50 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: July 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–18984 Filed 7–24–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–3 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate for tart cherries that are utilized in the production of tart cherries products from $0.0019 to $0.0021 per pound. The assessment rate was recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2003–2004 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1, 2003, and ends June 30, 2004. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 25, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html.*

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301)–734–5275; 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, or 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, or Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are 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. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable tart cherries beginning July 1, 2003, and continue until amended, suspended, or terminated. This rule 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, and 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. Such 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 rule would increase the assessment rate established for the Board for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products from $0.0019 to $0.0021 per pound of cherries.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–2003 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rate is expected to generate enough income to meet the Board's operating expenses in 2003–2004.

The Board met on January 23, 2003, and unanimously recommended 2003–2004 expenditures of $532,000. The industry completed a formal rulemaking proceeding which amended the assessment rate section by authorizing one assessment rate rather than two assessment rates for different tart cherry products [67 FR 51697]. The provisions requiring the establishment of different assessment rates for different products were removed. In their place, the Board is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or whether varying rates should be recommended for cherries manufactured into different products.

In addition, the amended order provides that the assessment rate should not apply to cherries diverted in orchard by growers, and those diverted by handlers through destruction at their plants. The Board recommended the amendment to allow one assessment rate for all tart cherry products handled. In making its recommendation, the Board stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others.

The amended order specifically provides that under § 930.41(f)(1) and (2) the established assessment rate may be uniform, or may vary depending on the product the cherries are used to manufacture. The Board consider the differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

On June 25, 2003 (68 FR 37726), a final rule was published in the **Federal Register** that established a single assessment rate for the 2002–2003 fiscal period for all tart cherries handled regardless of the product the cherries are used to manufacture. The Board determined that the markets for juice, juice concentrate, and puree were gaining in importance and that cherries used in such products should be assessed the same as those sold for use in assorted bakery items, as canned pie fill, and as dried cherries. The assessment rate for tart cherry products other than juice, juice concentrate, or puree was increased from $0.00175 to $0.0019 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree was increased from $0.000875 to $0.0019 per pound.

The Board considered the above items and decided that one assessment rate should be recommended for all cherry products during 2003–2004. According to the Board, processors have developed a strong market for juice and concentrate products over the past few years. There is considerable belief that juice will be one of the growth outlets for tart cherries. This results from the industry's promotional efforts being undertaken for juice and concentrate products, the segmentation of the market into retail and industrial components, and the nutritional/nutraceutical profile of the product. As a result, there has been an increase in consumer recognition, acceptance, purchases, and the value of tart cherry juice and concentrate.

According to the Board, prices received for tart cherry juice concentrate are now $25.00 per gallon or more. This is derived by using the fairly common conversion ratio of 100 pounds to the gallon for mid-west production, which has a raw product value of $0.25 per pound. Using a 50 pound to the gallon conversion for the product, typical for west coast production, this represents a per pound value of $0.50. The difference in the west and mid-west conversion factors is that tart cherries produced in the western United States generally have a higher sugar content and larger fruit size, thus fewer raw product is needed. The average grower price received ranges between $0.17 to $0.20 per pound.

According to the Board, puree products are as valuable and comparable to juice and juice concentrate products. The Board reported that the spot price for single strength puree for 2001 was about 60 cents per pound. The raw product equivalent (RPE) volume of pureed fruit was 539,504 pounds which is about 0.15 percent of all processed fruit. The Board also reported for 2001 that the price for five plus one product was 67 cents per pound. Five plus one is a product of cherries and sugar which is manufactured by many processors (25 pounds of cherries and five pounds of sugar to make a 30 pound commercial container). It is the main product that handlers produce. Five plus one cherries are primarily sold and remanufactured into assorted bakery items, canned pie fill, and dried cherries. Since, juice, juice concentrate, and puree are not considered to be low value products at this time the Board considers one assessment to be appropriate. The product is moved between production areas and may be converted into puree or concentrate at a later date, depending on the market demand for these products.

In comparing the costs of juice, juice concentrate, and puree, the Board has determined that current prices are similar for these products when compared to the 5 plus 1 product. The information received from the Board

indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of last season's short crop, much of the tart cherry products released from inventory were in the form of tart cherry juice and/or juice concentrate. There is not much, if any, of this product available on the market today. The Board contends that given these factors, it is hard to suggest that juice/concentrate, or puree, are of lesser value than the more traditional products such as pie-fill or individually quick frozen tart cherries. Thus, the Board determined that one assessment rate is appropriate for the 2003–04 fiscal period.

Budgeted expenditures for the 2003–04 fiscal period were unanimously recommended at $532,000. The major expenditures recommended by the Board for 2003–04 include $81,000 for meetings, $149,000 for compliance, $191,000 for personnel, $106,000 for office expenses, and $5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts, respectively.

Last fiscal period's budgeted expenditures were $522,500. However last season, the tart cherry industry experienced a significant frost mainly in Michigan which severely impacted the crop. Only 60 million pounds of cherries were produced in comparison to a normal crop of about 260 million pounds. The Board staff responded to this decrease in funds by cutting its expenditures. The Board reduced its staff and Committee travel for meetings and used reserve funds to continue administrative operations in 2002–2003. The recommended assessment rate of $0.0021 is higher than the current rate of $0.0019 per pound. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rate, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. Therefore, total assessment income for 2003–2004 is estimated at $546,000. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $66,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

The assessment rate established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rate would be effective for an indefinite period, the Board would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

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 the 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 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2003–2004 expenditures of $532,000 and an assessment rate increase from $0.0019 to $0.0021 per pound. This rule would increase the assessment rate established for the Board and collected from handlers for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products. The quantity of assessable tart cherries expected to be produced during the 2003–2004 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2003–2004 fiscal period include $81,000 for meetings, $149,000 for compliance, $191,000 for personnel, $106,000 for office expenses, and $5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rate, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. Since 1987/88 tart cherry bearing acres have decreased from 50,050 acres, to 36,900 acres in the 2002/03 crop year. In 2002/03, 93 percent of domestic tart cherry acreage was located in four States: Michigan,

New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 74 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. Tart cherry acreage in Michigan decreased from 28,500 acres in 2000–2001, to 27,400 acres in 2002–2003.

In deriving the recommended assessment rate, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. Cherries used for handler destruction and grower diversion outlets are exempt from assessment obligations. Funds in the reserve (approximately $66,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (§ 930.42(a)).

While this action will impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 23, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–2004 fiscal begins on July 1, 2003, and ends on June 30, 2004, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) the Board needs the funds to operate the program; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after July 1, 2003, the assessment rate imposed on handlers shall be $0.0021 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products.

Dated: July 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Services.

[FR Doc. 03–18985 Filed 7–24–03; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for ammunition (except small arms) manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Ammunition (Except Small Arms) Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before August 8, 2003.

ADDRESSES: Address comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATI0N CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Pub. L. 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS).* The second is the Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Ammunition (Except Small Arms) Manufacturing, North American Industry Classification System (NAICS) 332993. The public is invited to comment or provide source information to SBA on the proposed waiver of the

nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–18986 Filed 7–24–03; 8:45 am]

BILLING CODE 8025–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1275

[Notice 03–083]

RIN 2700–AC50

Investigation of Research Misconduct

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) proposes this rule to implement the ''Federal Policy on Research Misconduct'' (the Federal Policy). This proposed rule sets out the definition of research misconduct, procedure for investigating allegations of research misconduct and recommending findings, and procedure for adjudicating and appealing such findings. Findings of research misconduct must be accompanied by recommendations for administrative action by NASA to discourage such behavior and ensure the integrity of research funded or supported by NASA.

DATES: Comments must be received on or before September 23, 2003.

ADDRESSES: Send comments to: NASA Policy on Research Misconduct (NPRM) Comments, Office of the Chief Scientist, Code AS, National Aeronautics and Space Administration, 300 E Street SW., Washington, DC 20546–0001. NASA will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mayra N. Montrose, (202) 358–1492 (voice), (202) 358–3931 (fax).

SUPPLEMENTARY INFORMATION: The objective of the Federal Policy is to create a uniform policy framework for Federal agencies for the handling of allegations of misconduct in Federally funded or supported research. Within this framework, each Federal agency funding or supporting research is expected to fashion its own regulations to accommodate the various types of research transactions in which it is engaged.

In keeping with these objectives, the proposed NASA rule incorporates key aspects of the Federal policy, including the definition of research misconduct as fabrication, falsification or plagiarism, and the definitions of each of these sub-components; the requirements for a finding of research misconduct; and the four-stage process for determining research misconduct; *i.e.*, inquiry, investigation, adjudication, and appeal.

NASA's research mission involves the advancement of research in the fields of aeronautics, space science, earth science, biomedicine, biology, engineering, and physical sciences (physics and chemistry). NASA fulfills this objective through intramural research performed by NASA researchers and through extramural contracts, cooperative agreements, grants, and Space Act agreements with the private sector, and with other governmental entities. Because of this multiplicity of research arrangements, allegations of research misconduct could arise in any number of ways.

In addition, the core principle of the Federal Policy is that while research institutions have the primary responsibility for the inquiry, investigation, and adjudication of allegations of research misconduct, Federal agencies have ultimate oversight authority for the research it funds or supports. While there is some overlap in the actions that may be pursued by Federal agencies and research institutions, the proposed rule is designed to provide procedures and criteria for the interaction of NASA with its research partners in dealing with the various contingencies that could arise in the processing of research misconduct allegations.

For example, an allegation of research misconduct might first be submitted to NASA through the NASA Office of Inspector General (OIG). If the research in question is conducted by NASA researchers, NASA shall conduct the inquiry, investigation, adjudication, and appeal stages. If the research is conducted by a research institution, the OIG shall ordinarily forward the allegation to that institution for inquiry and investigation and decide whether NASA shall conduct a parallel inquiry or investigation or defer its procedures pending completion of the investigative proceedings of the institution. The criteria for these decisions are set forth in the proposed rule.

On the other hand, if the allegation is received by the institution, the institution must inform the OIG if its inquiry determines that an investigation is warranted at which time, the OIG determines whether the OIG should conduct a parallel investigation.

In all cases, the investigation report and supporting evidence must be forwarded to NASA for adjudication and possible remedial administrative action. If the OIG deferred NASA's procedures pending review of the results of the research institution's investigative process, the OIG shall decide whether to recommend to the NASA Adjudication Official acceptance of the research institution's investigation report and final determination, in whole or in part. If the OIG makes such a recommendation, the OIG shall provide copies of the investigation report, evidentiary record, and final determination to the NASA Adjudication Official. If not, the OIG can initiate its own investigation or remand to the institution for further investigation.

With regard to any investigation conducted by the OIG, the OIG shall forward the copies of the investigation report and evidentiary record to the NASA Adjudication Official. All cases involving NASA-funded or -supported research that have gone through the investigation stage must receive an independent decision by the NASA Adjudication Official, which may be appealed.

The possible administrative actions that may be taken by NASA after research misconduct is determined to have occurred are set out in the proposed rule. The rule cannot prescribe the manner in which such action will be taken, however, as that will depend on whether the research is intramural or extramural, and if the latter, on the type of transaction being used to fund or support the research.

For example, Federal law prescribes different procedural frameworks for adverse contract actions, adverse grant actions, suspensions, or debarments from competing for Federal procurement or grant awards, and for adverse personnel actions against Federal civil service employees. In the latter instance, the OIG may proceed under its previously existing administrative investigation process when misconduct is alleged against Federal civil service employees. The proposed rule provides that the recommendations for administrative action, which must be included with a determination of research misconduct, shall be forwarded to the relevant NASA officials for their consideration. Nevertheless, a final determination of research misconduct can serve as the basis for correcting the research record and for notifying the relevant scientific review groups.

NASA shall amend 14 CFR part 1260 (Grants Handbook), 14 CFR 1274 (Commercial agreements with cost sharing), and 48 CFR Chapter 18 (NASA

FAR Supplement), to reflect the implementation of this policy.

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.

Small Entities

As required by the Regulatory Flexibility Act (5 U.S.C. 601–612), NASA has 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. NASA certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on small business entities.

Collection of Information

This proposed rule does not contain any information collection requirements subject to 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. NASA has analyzed this proposed rule under that Order and has determined that it does not have implications for federalism.

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.

Taking of Private Property

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

Civil Justice Reform

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

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 in any 1 year of $100 million or more by a State, local, and tribal government in the aggregate, or by the private sector.

NASA certifies that this regulation will not compel the expenditure in any 1 year of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, the detailed statement under section 202 of the Unfunded Mandates Reform Act is not required.

List of Subjects in 14 CFR Part 1275

Administrative practice and procedure, Grant programs, Human research subjects, Research, Science and technology, Scientists.

For the reasons discussed in the preamble, the National Aeronautics and Space Administration proposes to amend 14 CFR Chapter V by adding part 1275 to read as follows:

PART 1275—RESEARCH MISCONDUCT

Sec.

1275.100 Purpose and scope.
1275.101 Definitions.
1275.102 OIG handling of research misconduct matters.
1275.103 Role of awardee institutions.
1275.104 Conduct of the OIG inquiry.
1275.105 Conduct of the OIG research misconduct investigation.
1275.106 Administrative actions.
1275.107 Adjudication.
1275.108 Appeals.

Appendix to Part 1275—NASA Research Disciplines and its Associated Enterprises

Authority: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473).

§1275.100 Purpose and scope.

(a) The purpose of this part is to establish procedures to be used by the National Aeronautics and Space Administration (NASA) for the handling of allegations of research misconduct. Specifically, the procedures contained in this part are designed to result in:

(1) Findings as to whether research misconduct by a person or institution has occurred in proposing, performing, reviewing, or reporting results from research activities funded or supported by NASA; and

(2) Recommendations on appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred.

(b) This part applies to all research wholly or partially funded or supported by NASA. This includes any research conducted by a NASA installation and any research conducted by a public or private entity receiving NASA funds or using NASA facilities, equipment or personnel, under a contract, grant, cooperative agreement, Space Act agreement, or other transaction with NASA.

(c) NASA shall make a determination of research misconduct only after careful inquiry and investigation by an awardee institution, another Federal agency, or NASA, and an adjudication conducted by NASA. NASA shall afford the accused individual or institution a chance to comment on the investigation report and a chance to appeal the decision resulting from the adjudication. In structuring procedures in individual cases, NASA may take into account procedures already followed by other entities investigating the same allegation of research misconduct. Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part.

(d) A determination that research misconduct has occurred must be accompanied by recommendations on appropriate administrative actions. However, the administrative actions themselves may be imposed only after further procedures described in applicable NASA regulations concerning contracts, cooperative agreements, grants, Space Act agreements, or other transactions, depending on the type of agreement used to fund or support the research in question. Administrative actions involving NASA civil service employees may be imposed only in compliance with all relevant Federal laws and policies.

(e) Allegations of research misconduct concerning NASA research may be transmitted to NASA in one of the following ways: by mail addressed to Office of Inspector General (OIG), Code W, National Aeronautics and Space Administration, 300 E Street, SW, Washington, DC 20546–0001; via the NASA OIG Hotline at 1–800–424–9183, or the NASA OIG cyber hotline at *www.hq.nasa.gov/office/oig/hq/hotline.html.*

(f) To the extent permitted by law, the identity of the Complainant, witnesses, or other sources of information who wish to remain anonymous shall be kept confidential. To the extent permitted by law, NASA shall protect the research misconduct inquiry, investigation, adjudication, and appeal records maintained by NASA as exempt from mandatory disclosure under 5 U.S.C. 552, the Freedom of Information Act, as amended, and 5 U.S.C. 552a, the Privacy Act, as amended.

§ 1275.101 Definitions.

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. Research as used in this part includes all basic, applied, and demonstration research in all fields of science, engineering, and mathematics, such as research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals.

(b) *Fabrication* means making up data or results and recording or reporting them.

(c) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(d) *Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

(e) *Awardee institution* means any public or private entity or organization (including a Federal, State, or local agency) that is a party to a NASA contract, grant, cooperative agreement, Space Act agreement, or to any other transaction with NASA, whose purpose includes the conduct of research.

(f) *NASA research* means research wholly or partially funded or supported by NASA involving an awardee institution or a NASA installation. This definition includes research wholly or partially funded by NASA appropriated funds, or research involving the use of NASA facilities, equipment, or personnel.

(g) *NASA research discipline* means one of the following areas of research that together comprise NASA's research mission for aeronautics, space science, earth science, biomedicine, biology, engineering and physical sciences (physics and chemistry).

(h) *Inquiry* means the assessment of whether an allegation of research misconduct has substance and warrants an investigation.

(i) *Investigation* means the formal development of a factual record and the examination of that record leading to recommended findings on whether research misconduct has occurred, and if the recommended findings are that such conduct has occurred, to include recommendations on appropriate administrative actions.

(j) *Complainant* is the individual bringing an allegation of research misconduct related to NASA research.

(k) *Respondent* is the individual or institution who is the subject of an allegation of research misconduct related to NASA research.

(l) *Adjudication* means the formal procedure for reviewing and evaluating the investigation report and the accompanying evidentiary record and for determining whether to accept the recommended findings and any recommendations for administrative actions resulting from the investigation.

(m) *NASA Adjudication Official* is the NASA Associate Administrator for the Enterprise with the greatest expertise in the NASA research discipline involved in the research misconduct allegation. The appendix to this part contains the list of NASA research disciplines and their associated Enterprises.

(n) *Appeal* means the formal procedure initiated at the request of the Respondent for review of a determination resulting from the adjudication and for affirming, overturning, or modifying it.

(o) *NASA Appeals Official* is the NASA Deputy Administrator or other official designated by the NASA Administrator.

§ 1275.102 OIG handling of research misconduct matters.

(a) When an allegation is made to the OIG, rather than to the awardee institution, the OIG shall determine whether the allegation concerns NASA research and whether the allegation, if true, falls within the definition of research misconduct in § 1275.101(a). Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part. If these criteria are met and the research in question is being conducted by NASA researchers, the OIG shall proceed in accordance with § 1275.104. If the research in question is being conducted at an awardee institution, another Federal agency, or is a collaboration between NASA researchers and coinvestigators at either academia or industry, the OIG must refer the allegation that meets the definition of research misconduct to the entities involved and determine whether to—

(1) Defer its inquiry or investigation pending review of the results of an inquiry or investigation conducted at the awardee institution or at the Federal agency (referred to for purposes of this part as external investigations); or

(2) Commence its own inquiry or investigation.

(b) The OIG must inform the NASA Office of the Chief Scientist of all allegations that meet the definition of research misconduct received by the OIG and of the determinations of the OIG required by § 1275.101. The NASA Office of the Chief Scientist shall notify the NASA Office of the Chief Engineer or the NASA Office of the Chief Technologist when the research is either engineering or technology research.

(c) The OIG should defer its inquiry or investigation pending review of the results of an external investigation whenever possible. Nevertheless, the OIG retains the right to proceed at any time with a NASA inquiry or investigation. Circumstances in which the OIG may elect not to defer its inquiry or investigation include, but are not limited to, the following:

(1) When the OIG determines that the awardee institution is not prepared to handle the allegation in a manner consistent with this part;

(2) When the OIG determines that NASA involvement is needed to protect the public interest, including public health and safety;

(3) When the OIG determines that the allegation involves an awardee institution of sufficiently small size that it cannot reasonably conduct the investigation itself;

(4) When the OIG determines that a NASA program or project could be jeopardized by the occurrence of research misconduct; or

(5) When the OIG determines that any of the notifications or information required to be given to the OIG by the awardee institution pursuant to § 1275.103(b) requires NASA to cease its deferral to the awardee institution's procedures and to conduct its own inquiry or investigation.

(d) A copy of the investigation report, evidentiary record, and final determination resulting from an external investigation must be transmitted to the OIG. The OIG shall determine whether to recommend to the NASA Adjudication Official acceptance of the investigation report and final determination in whole or in part. The OIG's decision must be made within 45 days of receipt of the investigation report and evidentiary record. This period of time may be extended by the

OIG for good cause. The OIG shall make this decision based on the OIG's assessment of the completeness of the investigation report, and the OIG's assessment of whether the investigating entity followed reasonable procedures, including whether the Respondent had an adequate opportunity to comment on the investigation report and whether these comments were given due consideration. If the OIG decides to recommend acceptance of the results of the external investigation, in whole or in part, the OIG shall transmit a copy of the final determination, the investigation report, and the evidentiary record to the NASA Adjudication Official, and to the NASA Office of the Chief Scientist. When the OIG decides not to recommend acceptance, the OIG must initiate its own investigation.

(e) In the case of an investigation conducted by the OIG, the OIG shall transmit copies of the investigation report, including the Respondent's written comments (if any), the evidentiary record and its recommendations, to the NASA Adjudication Official and to the NASA Office of the Chief Scientist.

(f) Upon learning of alleged research misconduct, the OIG shall identify potentially implicated awards or proposals and, when appropriate, shall ensure that program, grant, or contracting officers handling them are informed. Neither a suspicion nor allegation of research misconduct, nor a pending inquiry or investigation, shall normally delay review of proposals. Subject to paragraph (g) of this section, reviewers or panelists shall not be informed of allegations or of ongoing inquiries or investigations in order to avoid influencing reviews.

(g) If, during the course of an OIG conducted inquiry or investigation, it appears that immediate administrative action, as described in § 1275.106, is necessary to protect public health or safety, Federal resources or interests, or the interests of those involved in the inquiry or investigation, the OIG shall inform the appropriate NASA officials.

§ 1275.103 Role of awardee institutions.

(a) The awardee institutions have the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institutions, although NASA has ultimate oversight authority for NASA research.

(b) When an allegation of research misconduct related to NASA research is made directly to the OIG and the OIG defers to the awardee institution's inquiry or investigation, or when an allegation of research misconduct related to NASA research is made directly to the awardee institution which commences an inquiry or investigation, the awardee institution is required to:

(1) Notify the OIG immediately of the allegation and inform if an initial inquiry supports a formal investigation as soon as this is determined.

(2) Keep the OIG informed during such an investigation.

(3) Notify the OIG immediately at any time during an inquiry or investigation—

(i) If the seriousness of the apparent research misconduct warrants an investigation;

(ii) If public health or safety is at risk;

(iii) If Federal resources, reputation, or other interests need protecting;

(iv) If research activities should be suspended;

(v) If there is reasonable indication of possible violations of civil or criminal law;

(vi) If Federal action is needed to protect the interests of those involved in the investigation; or

(vii) If the research community or the public should be informed.

(4) Provide the OIG with a copy of the investigation report, including the recommendations made to the awardee institution's adjudication official and the Respondent's written comments (if any), along with a copy of the evidentiary record.

(5) Provide the OIG with the awardee institution's final determination, including any corrective actions taken or planned.

(c) If an awardee institution wishes the OIG to defer its own inquiry or investigation, the awardee institution shall complete any inquiry and decide whether an investigation is warranted within 60 days. It should similarly complete any investigation, adjudication, or other procedure necessary to produce a final determination, within an additional 180 days. If completion of the process is delayed, but the awardee institution wishes NASA's deferral of its own procedures to continue, NASA may require submission of periodic status reports.

(d) Each awardee institution must maintain and effectively communicate to its staff, appropriate policies and procedures relating to research misconduct, including the requirements on when and how to notify NASA.

§ 1275.104 Conduct of the OIG inquiry.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, the OIG may defer its inquiry or investigation until it receives the results of that external investigation. When the OIG does not receive the results within a reasonable time, the OIG shall ordinarily proceed with its own investigation.

(b) When the OIG decides to initiate a NASA investigation, the OIG must give prompt written notice to the individual or institution to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) When alleged misconduct may involve a crime, the OIG shall determine whether any criminal investigation is already pending or projected. If not, the OIG shall determine whether the matter should be referred to the Department of Justice.

(d) When a criminal investigation by the Department of Justice or another Federal agency is underway or under active consideration, the OIG shall determine what information, if any, may be disclosed to the Respondent or to NASA employees.

(e) To the extent possible, the identity of sources who wish to remain anonymous shall be kept confidential. To the extent allowed by law, documents and files maintained by the OIG during the course of an inquiry or investigation of misconduct shall be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act.

(f) When the OIG proceeds with its own inquiry, it is responsible for ensuring that the inquiry is completed within 60 days after it is commenced. The OIG may extend this period of time for good cause.

(g) On the basis of what the OIG learns from an inquiry, and in consultation as appropriate with other NASA offices, the OIG shall decide whether a formal investigation is warranted.

§ 1275.105 Conduct of the OIG research misconduct investigation.

(a) The OIG shall make every reasonable effort to complete a NASA research misconduct investigation and issue a report within 120 days after initiating the investigation. The OIG may extend this period of time for good cause.

(b) A NASA investigation may include:

(1) Review of award files, reports, and other documents readily available at NASA or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the Respondent to be heard.

(c) The OIG may invite outside consultants or experts to participate in a NASA investigation.

(d) During the course of the investigation, the OIG shall provide a draft of the investigation report to the Respondent, who shall be invited to submit comments. The Respondent must submit any comments within 20 days of receipt of the draft investigation report. This period of time may be extended by the OIG for good cause. Any comments submitted by the Respondent shall receive full consideration before the investigation report is made final.

(e) At the end of the investigation proceedings, an investigation report must be prepared, that shall include recommended findings as to whether research misconduct has occurred. A recommended finding of research misconduct requires that:

(1) There be a significant departure from accepted practices of the relevant research community for maintaining the integrity of the research record;

(2) The research misconduct be committed intentionally, knowingly, or in reckless disregard of accepted practices; and

(3) The allegation be proven by a preponderance of evidence.

(f) The investigation report must also be transmitted with the recommendations for administrative action, when recommended findings of research misconduct are made. Section 1275.106 lists possible recommended administrative actions and considerations for use in determining appropriate recommendations.

(g) NASA OIG may elect to proceed with its administrative investigation processes in lieu of a research misconduct investigation under this part when the allegation is against a civil service employee.

§ 1275.106 Administrative actions.

(a) Listed in paragraphs (a)(1) through (a)(3) of this section are possible administrative actions that may be recommended by the investigation report and adopted by the adjudication process. They are not exhaustive and are in addition to any administrative actions necessary to correct the research record. The administrative actions range from minimal restrictions (Group I Actions) to severe restrictions (Group III Actions), and do not include possible criminal sanctions.

(1) *Group I Actions.* (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period of time an individual, department, or institution obtain special prior approval of particular activities from NASA.

(iii) Require for a specified period of time that an institutional official other than those guilty of research misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) *Group II Actions.* (i) Restrict for a specified period of time designated activities or expenditures under an active award.

(ii) Require for a specified period of time special reviews of all requests for funding from an affected individual, department, or institution to ensure that steps have been taken to prevent repetition of the research misconduct.

(3) *Group III Actions.* (i) Immediately suspend or terminate an active award.

(ii) Debar or suspend an individual, department, or institution from participation in NASA programs for a specified period of time.

(iii) Prohibit participation of an individual as a NASA reviewer, advisor, or consultant for a specified period of time.

(b) In deciding what actions are appropriate when research misconduct is found, NASA officials should consider the seriousness of the misconduct, including, but not limited to:

(1) The degree to which the misconduct was knowing, intentional, or reckless;

(2) Whether the misconduct was an isolated event or part of a pattern;

(3) Whether the misconduct had a significant impact on the research record, research subjects, or other researchers, institutions, or the public welfare.

§1275.107 Adjudication.

(a) The NASA Adjudication Official must review and evaluate the investigation report and the evidentiary record required to be transmitted pursuant to §1275.102(d) and (e). The NASA Adjudication Official may initiate further investigations, which may include affording the Respondent another opportunity for comment, before issuing a decision regarding the case. The NASA Adjudication Official may also return the investigation report to the OIG with a request for further fact-finding or analysis.

(b) Based on a preponderance of the evidence, the NASA Adjudication Official shall issue a decision setting forth the Agency's findings as to whether research misconduct has occurred and recommending appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred. The NASA Adjudication Official shall render a decision within 30 (thirty) days after receiving the investigation report and evidentiary record, or after completion of any further proceedings. The NASA Adjudication Official may extend this period of time for good cause.

(c) The decision shall be sent to the Respondent and, if appropriate, to the Complainant. If the decision confirms the alleged research misconduct, it must include instructions on how to pursue an appeal to the NASA Appeals Official. The decision shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

§1275.108 Appeals.

(a) The Respondent may appeal the decision of the NASA Adjudication Official by notifying the NASA Appeals Official in writing of the appeal within 30 days after Respondent's receipt of the decision. If the decision is not appealed within the 30-day period, the decision becomes the final Agency action insofar as the findings are concerned.

(b) The NASA Appeals Official shall inform the Respondent of a final determination within 30 days after receiving the appeal. The NASA Appeals Official may extend this period of time for good cause. The final determination may affirm, overturn, or modify the decision of the NASA Adjudication Official and shall constitute the final Agency action insofar as the findings are concerned. The final determination shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

(c) Once final Agency action has been taken pursuant to paragraphs (a) or (b)

of this section, the recommendations for administrative action shall be sent to the relevant NASA components for further proceedings in accordance with applicable laws and regulations.

Appendix to Part 1275—NASA Research Disciplines and Respective Associated Enterprises

1. Aeronautics Research—Aerospace Technology Enterprise
2. Space Science Research—Space Science Enterprise
3. Earth Science Research and Applications—Earth Science Enterprise
4. Biomedical Research—Biological and Physical Research Enterprise
5. Fundamental Biology—Biological and Physical Research Enterprise
6. Fundamental Physics—Biological and Physical Research Enterprise
7. Other engineering research not covered by disciplines above—NASA Chief Engineer
8. Other technology research not covered by disciplines above—NASA Chief Technologist

Dated: July 10, 2003.

Sean O'Keefe,

Administrator.

[FR Doc. 03–18982 Filed 7–24–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–4867–N–02]

Manufactured Housing Consensus Committee—Rejection of Consumer Complaint Handling Proposal

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Denial for recommendation for proposed regulatory changes.

SUMMARY: The Secretary has rejected a proposed recommendation by the Manufactured Housing Consensus Committee to revise regulations concerning how manufacturers are required to handle reports of problems with manufactured homes. The Secretary has determined that the proposal conflicts in several ways with the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708\6401 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number at TTY by calling the toll-free Federal Information Relay Service at (800) 87–8339.

SUPPLEMENTARY INFORMATION: The Manufactured Housing Consensus Committee (MHCC) has transmitted to the Secretary a recommendation dated March 26, 2003 (MHCC proposal), that the Manufactured Home Procedural and Enforcement Regulations, 24 CFR part 3282, be amended by revising Subpart I, Consumer Handling and Remedial Actions (24 CFR 3282.401–416) (Subpart I).

Background

The MHCC as established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426 (the Act) for the purpose of providing periodic recommendations to the Secretary to adopt, revise, and interpret the federal manufactured housing construction and safety standards and the procedural and enforcement regulations. 42 U.S.C. 5403(a)(3)(A). It may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of the regulations. 42 U.S.C. 5403(b)(1). To be promulgated by HUD, the regulation and revisions recommended by the MHCC must be consistent with the Act.

Within 120 days from the date on which the Secretary receives a proposed procedural or enforcement regulation from the MHCC, the Secretary approve a reject the proposal. If the Secretary rejects the proposal, HUD must provide to the MHCC a written explanation of the reasons for rejection and publish in the **Federal Register** the rejected proposal and the reasons for the rejection. 42 U.S.C. 5403(b)(4).

Procedural Explanation

The Secretary recognizes and appreciates that the members of the MHCC are working hard to implement the role of the MHCC in the federal manufactured housing program. Although this proposal is inconsistent with the authority granted to the MHCC under the Act, HUD is publishing this proposal (Appendix A) and the Secretary's reasons for rejecting the proposal, as if the proposal were subject to the procedures in section 604(b).

Decision of the Secretary

The Secretary rejects the MHCC's proposal for the revision of regulations in Subpart I for the handling of reports of problems in manufactured housing for reasons that include the following:

The MHCC proposal is in direct conflict with parts of the Act. In section 615 of the Act (42 U.S.C. 5414), Congress placed responsibilities for the correction and notification of defects in manufactured homes on manufacturers, and set guidelines for manufacturers to meet these responsibilities. Section 613 of the Act (42 U.S.C. 5412) imposes additional repair and repurchase requirements on manufacturers. Subpart I, which the MHCC proposal would amend, contains the regulations by which the Department has implemented the intent to Congress with respect to notification and correction requirements.

The MHCC proposal seeks to limit the statutory responsibilities of manufacturers while imposing similar duties on parties on whom Congress did not place these responsibilities, such as retailers, distributors, transporters, and landscapers. HUD does not have authority to shift statutory responsibilities away from manufacturers. The MHCC has not established that HUD has authority to hold these newly identified parties responsible for correction and notification of defects in manufactured homes.

The MHCC proposal adds significantly to the administrative responsibilities of HUD and the states, by making HUD and the State Administrative Agencies (SAA's) the initial arbiters of responsibility on all complaints and information about problems in manufactured homes. The proposal does not take into account the self-policing responsibilities of the manufacturers set out in section 615 of the Act (42 U.S.C. 5414). The concern about additional administrative burdens also applies to the provisions that make SAA's responsible for assuring that all notifications are sent and all concerns are made. In addition, the MHCC proposal may define roles for HUD and the SAAs that require them to interfere in matters that are traditionally settled through private contracts. Further, HUD cannot permit voluntary undertakings by private parties to constitute governmental action for purposes of judicial review.

The MHCC proposal would, in effect, create a warranty for products found in the home, and would then limit the applicable time of the warranty. There is not authority in the Act to create a warranty. In fact, during consideration of the most recent amendments to the Act, Congress heard testimony suggesting a statutory warranty but declined to adopt this approach. Instead, the Act was amended in section 623 (42 U.S.C. 5422) to establish an additional protection for consumers through a dispute resolution program that covers problems reported in the

first year after a manufactured home is installed.

The MHCC proposal does not adequately implement the provision in section 615(h) of the Act (43 U.S.C. 5414(h)), which requires manufactures to submit a notification and correction plan to the Secretary for approval before the plan is implemented. Under the MHCC proposal, a party would be permitted to correct a home without first having a plan of correction approved.

The MHCC proposal seeks to establish time limits for a manufacturer's responsibilities under section 615 (42 U.S.C. 5414) that are not consistent with the Act. Section 615 contemplates enforcement authority over certain defects about which the consumer would not have knowledge unless notified or until his or her safety is compromised. While the Act places affirmative notification and correction requirements on manufacturers for defects as a protective measure even if an affected consumers has not yet complained, the MHCC proposal would limit a manufacturer's responsibility to act until after a consumer complains. Further, the MHCC proposal would limit the responsibility of manufacturers and retailers to those defects discovered within 5 years from the date of the first sale. An even shorter period of 2 years would be established for defects that could be attributed to other parties. Section 615 includes no such limits.

The MHCC proposal raises further questions relating to section 623 of the act (42 U.S.C. 5422). Section 623 requires HUD to implement a dispute resolution program by December 2005, which would be used to resolve disputes among manufacturers, retailers, and installers about responsibilities for the correction of defects reported in the first year after a manufactured home is installed. The MHCC proposal is not in agreement with the section 623 process because the proposal; adds potentially responsible parties (*e.g.,* landscapers, contractors, product suppliers); creates the limits that are inconsistent with section 623; and fails to provide for a forum in which the disputes are to be resolved.

Text of MHCC Proposal

The text of the rejected proposal submitted by the MHCC is published as Appendix A.

Dated: July 17, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—Manufactured Housing Consensus Committee Proposal To Amend Manufactured Housing Home Procedural and Enforcement Regulations 24 CFR Part 3282

March 26, 2003.

§ 3282.7 Definitions.

(i) *Dealer*—See *Retailer.*

(j) *Defect* means a failure to comply, or the failure of a component used to comply with an applicable Federal Manufactured home safety and construction standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home. See related definitions of imminent safety hazard (definition q), non-compliance (definition x), and serious defect (definition ff).

(dd) *Retailer* means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons whom in good faith purchase or lease a manufactured home for purposes other than resale.

(ee) *Responsible party* means any of the following: manufactured home manufacturers, retailers, distributors, contractors, product suppliers, product distributors, installers, transporters, developers, landscapers, and/or homeowners.

Subpart—Consumer Complaint Handling and Remedial Actions

§ 3282.401 Purpose and scope.

(a) The purpose of this subpart is to establish a system under which the protections of the Act are provided with a minimum of formality and delay, but in which the rights of all parties are protected.

(b) This subpart sets out the procedures to be followed by responsible parties, State Administrative Agencies, primary inspection agencies, and the Secretary to assure proper notification and/or correction with respect to manufactured homes as required by the Act. Notification and correction may be required to be provided with respect to manufactured homes that have been sold or otherwise released by the manufacturer to another party when the responsible party, an SAA or the Secretary determines that an imminent safety hazard, serious defect, or defect may exist in those manufactured homes as set out herein. For non-compliances, correction shall be required to the single home it's reported in.

(c) This subject sets out the rights of retailers under section 613 of the Act, 42 U.S.C. 5412, to obtain remedies from manufacturers in certain circumstances.

§ 3282.402 General principles.

(a) Nothing in this subpart or in these regulations shall limit the rights of the purchaser under any contract or applicable law.

(b) The liability of manufactured home manufacturers to provide remedial actions under this subpart is limited by the principle that manufacturers are not responsible for failures that occur in manufactured homes or parts thereof as the result of the actions of other responsible parties, normal wear and aging, gross and unforeseeable consumer abuse, or unforeseeable neglect of maintenance.

(c) Responsibility for remedial actions under this subpart may also be assessed to responsible parties to the extent that they have contributed to or caused the failure.

(d) The extent of a responsible party's responsibility for providing notification and/or correction depends upon the seriousness of problems for which they may be responsible under this subpart.

(e) It is the policy of these regulations that all consumer complaints or other information indicating the possible existence of an imminent safety hazard, serious defect, defect, or non-compliance should be referred to the manufacturer and/or retailer and/or other responsible party of the potentially affected manufactured home as early as possible so that the manufacturer or other responsible party can begin to timely respond to the consumer and take any necessary remedial actions. If the responsible party receiving the notice believes the issue is the responsibility of another responsible party, the information may be forwarded to that party.

§ 3282.403 Limitations

This shall limit the requirements under this subpart for notification or correction to the time frames listed below;

(a) By a manufactured home manufacturer or retailer, to a period of five (5) years from the date of first sale and completion of set-up of the manufactured home to the first purchaser. Any home over five (5) years in age from the date of sale and delivery to the first purchaser is exempt from these regulations or requirements for notification or correction by a manufactured home manufacturer or retailer;

(b) By an installer, contractor, product supplier, product distributor, transporter, developer, or landscaper for work completed and/or product supplied, to a period of two (2) years from the date such work is completed or such product is supplied. Any home over two (2) years after the date of completion of such work is exempt from these regulations by an installer, contractor, product supplier, product distributor, transporter, developer, or landscaper.

(c) The homeowner has a continuing obligation for providing adequate upkeep and maintenance of their manufactured home.

(d) Manufacturers and/or other responsible parties are not liable for the notification and correction of work done by others.

§ 3282.404 Consumer complaint and information referral.

When a consumer complaint or other information indicating the likely existence of a non-compliance, defect, serious defect, or imminent safety hazard is received by a State

Administrative Agency or the Secretary, the SAA or the Secretary shall forward the complaint or other information to the responsible party. The responsibility to assure proper investigation and assignment of responsible party belongs to the SAA in the state in which the home is located. The SAA or the Secretary may, when it appears from the complaint or other information that more than one manufactured home may be involved, simultaneously send a copy of the complaint or other information to the SAA of the state where the manufactured home was manufactured or to the Secretary if there is no such SAA. When it appears that an imminent safety hazard or serious defect may be involved, the SAA shall send a copy to the Secretary. The SAA in the state of production of the manufactured home shall assist the SAA in the state in possession of the manufactured home as needed. The SAA in the state of production shall be responsible to assure the manufacturer's records reflect the proper investigation, record keeping, corrective action, and responses of manufacturer actions.

§ 3282.405 Investigation, determination, repair and notification by responsible parties.

(a) The manufacturer shall review its records to determine whether or not a defect, serious defect, or imminent safety hazard is indicated as set out in this subpart with respect to all manufactured homes produced by the manufacturer within five (5) years of the date of sale to the first purchaser, in which there likely exists an imminent safety hazard, serious defect, or defect.

[FR Doc. 03–18908 Filed 7–24–03; 8:45 am]

BILLING CODE 4210–27–M

POSTAL SERVICE

39 CFR Part 111

Merchandise Return Service Label Changes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the *Domestic Mail Manual* that would require a Postal routing barcode on all Merchandise Return Service labels.

DATES: Submit comments on or before August 25, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U. S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza SW, 11 Floor N, Washington, DC 20260. Comments may be submitted via fax to 703–292–4058, ATTN: Obataiye B. Akinwole or via email to *obataiye.b.akinwole@usps.gov*.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, (703) 292–3643.

SUPPLEMENTARY INFORMATION:

Background

Under current Postal Service standards, there is no requirement for barcodes on Merchandise Return Service (MRS) labels with the exception of those using Delivery Confirmation Service.

The Postal Service is concerned that optimum service may not be realized when MRS labels are not barcoded. As a result, the Postal Service will, upon publication of a final rule, require a Postal routing barcode that represents the correct 5-digit ZIP Code information for the delivery address of the MRS label. This is in line with the Postal Service's obligation to ensure prompt, efficient service for all product lines.

Effective Date

The Postal Service is proposing that the following revisions become effective January 5, 2004. Mailers are permitted to prepare labels under the revised standards immediately upon publication of the final rule. Effective with required compliance on June 2, 2005 nonbarcoded labels will not be accepted.

Proposed Changes

Under this proposal, all MRS labels must include a properly prepared barcode that represents the correct ZIP Code information for the delivery address on the MRS label plus the appropriate verifier character suffix or application identifier prefix characters appropriate for the barcode symbology as described in *Domestic Mail Manual (DMM)* C850 for machinable parcels. Effective January 10, 2004, only the UCC/EAN Code 128 symbology may be used for all parcel barcodes. All mailable hazardous materials sent at First-Class Mail, Priority Mail, or Express rates are exempt from this standard.

The Postal Service is replacing the Small Parcel and Bundle Sorter (SPBS) with the new Automated Parcel Processing System (APPS). The APPS machine is capable of processing small parcels that would normally by pass Bulk Mail Center (BMC) operations, at more than twice the efficiency of the SBPS machine. This machine is capable of reading a variety of barcode symbologies. As a result, customers distributing labels for parcels that will bypass the BMC environment must use the standards in this notice.

Mailers using Delivery Confirmation Service (DelCon) must use a single concatenated barcode that combines the postal routing code and Delivery Confirmation using the symbologies in DMM C850. Delivery Confirmation Service is not mandatory; however, customers using the service option must use the label format in this notice.

Mailers will be required to submit 10 samples of new labels to the office where the permit was originally issued no later than the next anniversary date of the permit, or within six months of the effective date of this notice, whichever occurs last. Although customers will not be required to provide samples when MRS labels are reprinted, it is recommended that they work with their local office to ensure pieces meet postal standards.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S. C. of 553 (b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment of the following proposed revisions to the DMM, incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

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

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

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

Domestic Mail Manual (DMM)

* * * * *

S Special Services

S900 Special Postal Services

* * * * *

S920 Convenience

* * * * *

S923 Merchandise Return Service

* * * * *

5.0 FORMAT

* * * * *

5.6 Format Elements

* * * * *

[Add new item j to read as follows:]

j. Every MRS label must include a properly prepared barcode that represents the correct ZIP Code

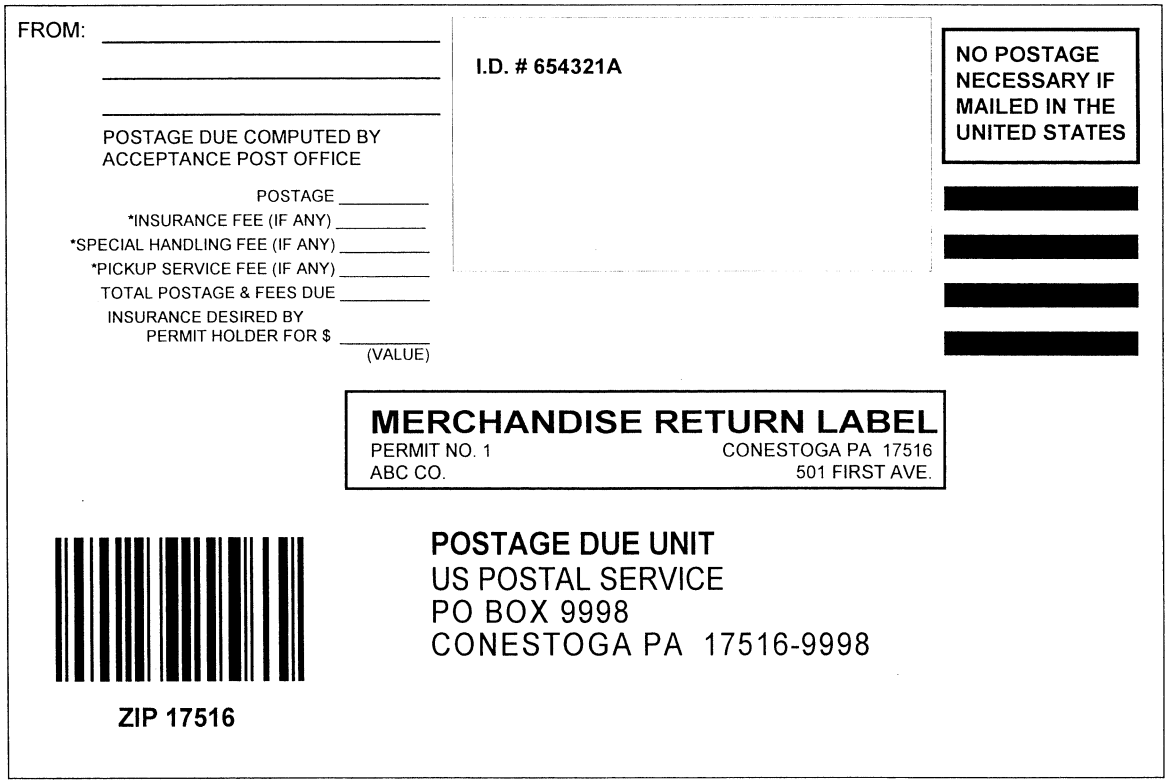
information for the delivery address on the label plus the appropriate verifier character suffix or application identifier prefix characters appropriate for the barcode symbology as described in C850 for machinable parcels. MRS labels with Delivery Confirmation items must use a single concatenated barcode as described in C850. In addition to the barcode requirements in C850, the following requirement must be met in preparing MRS labels:

(1) Barcode Location. If a separate label is used, a minimum clear zone of ⅛ inch must be maintained on all sides of the barcode. If a barcoded label is used it must be placed either above the delivery address and to the right of the return address or to the left of the delivery address. In all cases the barcode must be placed on the address side and not overlap any adjacent item. The barcode must be parallel to the address as read.

* * * * *

Exhibit 5.6a Merchandise Return Label With No Special Services or With Insurance, Special Handling, or Pickup Service (*see* 5.6d)

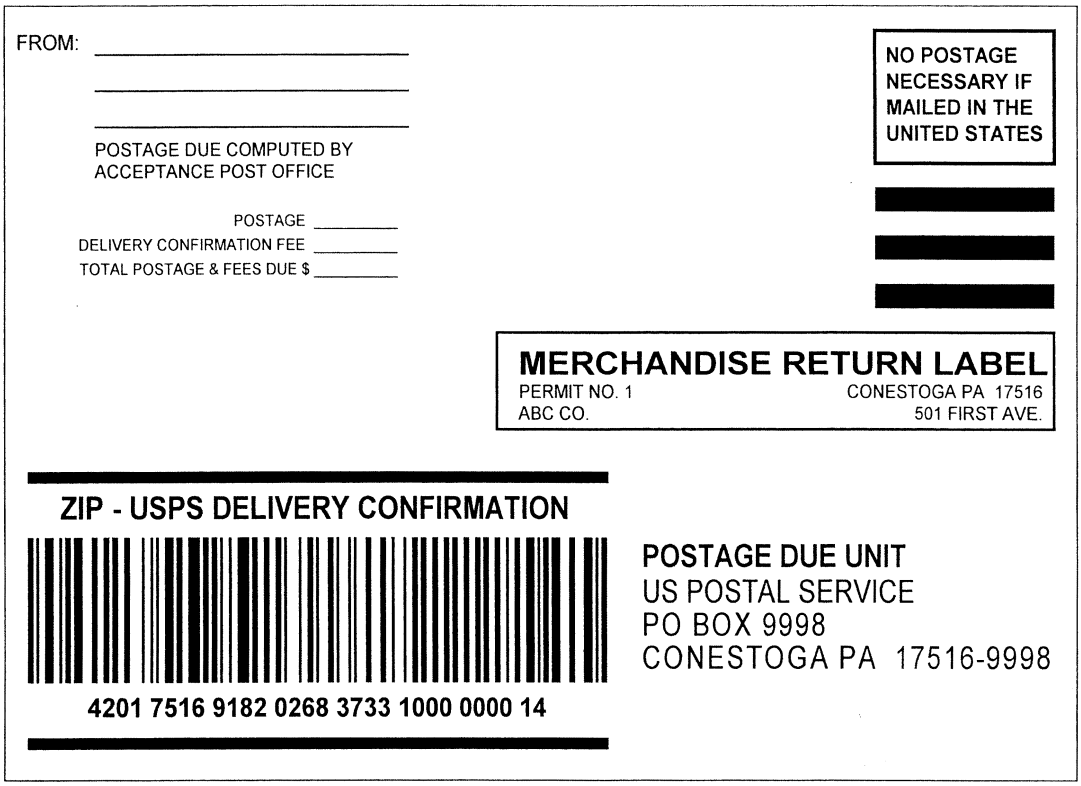
[Revise Exhibit 5.6a as follows:]



* * * * *

[Add new Exhibit 5.6e to read as follows:]

Exhibit5.6e Merchandise Return Label With a Single Concatenated Barcode



* * * * *

We will publish appropriate amendment to 39 CFR 11.3 to reflect the changes if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–18996 Filed 7–24–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7529–5]

RIN 2060–AK67

Protection of Stratospheric Ozone: Ban on Trade of Methyl Bromide With Non-Parties to the Montreal Protocol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: With this action, EPA is proposing to prohibit the import and export of methyl bromide (class I, Group VI controlled substance) from or to a foreign state that is not a Party to the 1992 Copenhagen Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). EPA is proposing to ban trade in methyl bromide with non-Parties to the Copenhagen Amendments to the Protocol in order to ensure the United States meets its obligations under the Protocol and associated amendments.

In the ''Rules and Regulations'' section of the **Federal Register**, we are adopting these prohibitions as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no relevant adverse comment, we will not take further action on this proposed rule. If we receive relevant adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments on the companion direct final rule must be received on or before August 25, 2003, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on August 4, 2003. If a hearing is requested it will be held August 19, 2003.

ADDRESSES: Comments on the companion direct final rule may be submitted by mail to Air and Radiation. Send two copies of your comments to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XIII, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The Docket's hours of operation are 8:30 a.m. until 4:30 p.m. Monday through Friday. Comments may also be submitted electronically, through hand delivery or courier. Refer to the companion direct final for detailed instructions on submitting comments electronically, or through hand delivery or courier.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Kate Choban by telephone at (202) 564–3524, or by e-mail at *choban.kate@epa.gov,* or by mail at Kate Choban, U.S. Environmental Protection Agency, Global Programs Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, 202–564–3524. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC, 20001. You may also visit the Ozone Depletion Web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection

regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: This action concerns the import and export of methyl bromide (class I, Group VI controlled substance) from or to a foreign state that is not a Party to the 1992 Copenhagen Amendments to the Montreal Protocol on Substances the Deplete the Ozone Layer (Protocol). EPA is proposing to ban trade in methyl bromide with non-Parties to the Copenhagen Amendments to the Protocol in order to ensure the United States meets its obligations under the Protocol and associated amendments. For further information, please *see* the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the import and export of methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Importers and Exporters of methyl bromide

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business, organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR 82, Subpart A. 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.

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 the Office of Air and Radiation Docket & Information Center, Air Docket ID No. A–92–13, Section XIII. 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 EPA West, 1301 Constitution Ave. NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)–566–1742, Fax: (202)–566–1741. The materials may be inspected from 8:30 am until 4:30 pm Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. 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.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of comment period will be marked late. EPA is not required to consider these late comments. If you plan to submit comments, please also notify Kate Choban, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (202)–564–3524.

Information designated as Confidential Business Information (CBI) under 40 CFR, Part 2, Subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments.

2. *By Mail.* Send two copies of your comments to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XIII, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Ave. NW., Washington, DC, 20460.

3. *By Hand Delivery or Courier.* Deliver your comments to: 501 3rd Street NW., Washington, DC 20001, Attention Docket ID No. A–92–13, Section XIII. Such deliveries are only accepted during the Docket's normal hours of operation as identified under **ADDRESSES.**

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID No. A–92–13, Section XIII.

D. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the mail or courier addresses listed in Units C.2 or C.3, as appropriate, to the attention of Air Docket ID No. A–92–13, Section XIII. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Summary of Supporting Analysis

II. 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 this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of 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 by EPA and OMB that this rule is not a ''significant regulatory action'' within the meaning of the Executive Order and will be signed by the Administrator only after completion of review by OMB.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) previously approved the information collection requirements that can be used to implement today's proposed rule. The previously approved ICR is assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

There is no additional paperwork burden as a result of this rule. Current record keeping will allow EPA to implement the provisions of today's action.

The information collection previously approved will be used to implement the trade ban in paragraph 1 qua under Article 4 of the Montreal Protocol for methyl bromide. The information collection under this rule is authorized under sections 603(b) and 603(d) of the Clean Air Act Amendments of 1990 (CAA). This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in this rule are intended to:

(1) Satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(2) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(3) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology

and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 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.

Category	NAICS Code	SIC Code	SIC small business size standard (in number of employees or millions of dollars)
1. Chemical and Allied Products, NEC	*424690*	*5169*	*100*

Based on an analysis of the U.S. exports of methyl bromide to specific countries, EPA has determined that only 3 countries of the 50 to whom U.S. producers of methyl bromide have exported over the past three years would be impacted because they have not yet ratified the Copenhagen Amendments to the Protocol. Specifically, the rule would ban the export of 41 metric tonnes to Cyprus, Cote d'Ivoire, and the United Arab Emriates compared to an average export from the entire U.S. of 5,236 metric tonnes. These countries represent less than 1% of all U.S. exports of methyl bromide for the years 2000, 2001, and 2002. So, economic impacts for U.S. producers of methyl bromide would be extremely minimal. The rule will not constrain U.S. farmers' ability to obtain methyl bromide from importers because the major methyl bromide exporting countries have already ratified the Copenhagen Amendments.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined by the NAICS Code listed above.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, 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, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. The provisions in today's rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as those requirements set forth by Congress in section 614 of the Clean Air Act. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

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

power and responsibilities among the various levels of government.''

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is expected to primarily affect importers and exporters of methyl bromide. EPA is not aware of any current uses of methyl bromide by public sector entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 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. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

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

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore E.O. 13045 does not apply. This rule is not subject to E.O. 13045 because it implements specific trade measures adopted under the Montreal Protocol and required by section 614 of the CAA.

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

This rule is not a ''significant energy action'' as defined in 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. The National Technology Transfer and Advancement Act

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

Therefore, EPA is not considering the use of any voluntary consensus standards.

Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

[FR Doc. 03–18855 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 411

[CMS–6014–P]

RIN 0938–AL14

Medicare Program; Interest Calculation

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the way we calculate interest, on Medicare overpayments and underpayments to providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans to be more reflective of current business practices. This change would reduce the amount of interest assessed on overpayments and underpayments and simplify the way the interest is calculated.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–6014–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following addresses ONLY: Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: CMS–6014–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 445–G, 200 Independence Avenue, SW., Washington, DC 21201, or

Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Braymer, (410) 786–4323.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after the publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule and appointment to view public comments, telephone (410) 786–7197.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. Interest Calculation

Sections 1815(d) and 1833(j) of the Social Security Act (the Act) require that whenever a payment to a provider, supplier, or other entity is more than (overpayment) or less than (underpayment) the amount that was due to the provider, supplier, or other entity, we assess interest on the amount of the overpayment that the provider, supplier, or other entity owes to us or the underpayment that we owe to the provider, supplier, or other entity. This interest becomes due if the overpayment amount owed to us or the underpayment amount owed by us is not paid within 30 days of the date of the final determination of the overpayment or underpayment. We determine the rate of interest in accordance with 42 CFR 405.378 by comparing the Private Consumer Rate with the Current Value of Funds Rate and assessing the interest at the higher of the two rates that is in effect on the date of the final determination of the amount of the overpayment or underpayment.

Interest is calculated from the date of the final determination and is owed if the amount of the overpayment or underpayment is not paid within 30 days. Interest is calculated in 30-day periods. A period that is less than 30 days is considered to be a full 30-day period.

In this proposed rule, we are proposing to change the method of calculating the amount of interest that is assessed on overpayments and underpayments to better align our practices to a commercial business model. We now assess interest prospectively (30 days into the future). Under private sector practices, interest is assessed on delinquent debts retrospectively.

We are proposing that periods of less than 30 days would not be treated as a full 30-day period. Interest would be assessed only for full 30-day periods when payment is not made on time.

The change in the method of calculation would apply only to overpayments and underpayments whose date of final determination occurred after the effective date of the final regulation implementing this proposed rule.

B. Technical Correction

We are making a technical correction to correct a reference that was cited in a previous revision of the Code of Federal Regulations (CFR). In § 411.24, the rate of interest to be assessed on the recovery of Medicare conditional payments is incorrectly referenced as appearing in § 405.376(d), rather than § 405.378(d), which is the correct reference.

II. Provisions of the Proposed Regulations

The provisions of this proposed rule are as follows:

- In § 405.378, we would revise paragraph (b)(2) to delete the requirement that periods of less than 30 days be treated as a full 30-day period.
- In § 411.24, we would revise paragraph (m)(2)(iii) to correct the reference to § 405.376(d) by changing the reference to § 405.378(d).

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (PRA).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866, (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

This proposed rule is not a major rule. It simply changes the way we calculate interest on overpayments and underpayments. It does not change how overpayments or underpayments are determined, nor does it require providers, suppliers, or other entities to change the way they interact with us in determining overpayments and underpayments.

During fiscal year (FY) 2001, we recovered $167 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $153 million, a difference of $14 million due to the change in the interest calculation. During FY 2002, we recovered $115.7 million in interest on delinquent

overpayments. Had this proposed rule been in effect, interest recoveries would have been $106.1 million, a difference of $9.6 million. During FY 2001, we paid $2.6 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been $2.4 million, a difference of $0.2 million. During FY 2002, we paid $5.2 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been $4.8 million, a difference of $0.4 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and government agencies. Most hospitals, and most other providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans are small entities, either by nonprofit status or by having revenues of $29 million or less in any 1 year. During FY 2001, we recovered $167 million in interest on delinquent overpayments; during FY 2002, we recovered $115.7 million. Had this proposed rule been in effect, interest recoveries would have been $153 million during FY 2001 and $106.1 million during FY 2002, a difference of $14 million and $9.6 million, respectively. This would amount to 0.1 percent of the $13.5 billion in overpayments recovered during FY 2001 and less than 0.1 percent of the $13.4 billion recovered during FY 2002. During FY 2001, we paid $2.6 million in interest on underpayments; during FY 2002, we paid $5.2 million. Had this proposed rule been in effect, we would have paid $2.4 million during FY 2001 and $4.8 million during FY 2002, a difference of $0.2 million and $0.4 million, respectively. This would amount to less than 0.1 percent of the $236 billion and $246.8 billion in benefit payments made during FY 2001 and FY 2002. For further details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This proposed rule has no operations impact on any provider, supplier, or other entity including small rural hospitals. The proposed rule simply changes the way we calculate interest we assess on overpayments and underpayments. It does not change how overpayments or underpayments are determined nor require providers, suppliers, or other entities to change how they interact with us in determining overpayments or underpayments. Therefore, we have determined that this proposed rule would not have a significant effect on the operations of a substantial number of rural hospitals. Because the interest we collect in a year far exceeds the interest we pay, the majority of providers, suppliers, and other entities would benefit from changing the method of calculating interest.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. During FY 2001 and FY 2002, we recovered $167 million and $115.7 million, respectively, in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $153 million during FY 2001, a difference of $14 million. For FY 2002, interest recoveries would have been $106.1 million, a difference of $9.6 million. During FY 2001, we paid $2.6 million in interest on underpayments. Had this proposed rule been in effect, we would have paid $2.4 million, a difference of $0.2 million. During FY 2002, we paid $5.2 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been $4.8 million, a difference of $0.4 million.

This proposed rule would have no impact on State, local, or tribal governments. It would reduce annual expenditures by providers, suppliers, or other entities in the private sector because it changes the way that we compute interest on any delinquent overpayments owed to us. Additionally, the change in interest calculation that we pay on underpayments owed to providers, suppliers, and other entities would not be an expenditure by a State, local, or tribal government.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications. By changing how we calculate interest, we are reducing the amount of interest assessed on overpayments owed to us and underpayments owed by us to providers, suppliers, and other entities.

B. Effects on the Medicare and Medicaid Programs

This proposed rule would reduce the amount of interest assessed on Medicare overpayments and underpayments. During FY 2001, we recovered $167 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $153 million, a difference of $14 million. During FY 2001, we paid $2.6 million in interest on underpayments. Had this proposed rule been in effect, we would have paid $2.4 million, a difference of $0.2 million. During FY 2002, we recovered $115.7 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $106.1 million, a difference of $9.6 million. During FY 2002, we paid $5.2 million in interest on underpayments. Had this proposed rule been in effect, we would have paid $4.8 million, a difference of $0.4 million. There is no effect on the Medicaid program.

C. Alternatives Considered

We considered a number of other methods to use in calculating the amount of interest owed. We assessed the relative merits of alternative calculation methods based on two primary criteria: Comparability to a commercial business model and secondly, relative ease and cost of administration. Applying the first criterion precludes continuing our current calculation method. Under the proposed rule, we would be able to use commercially obtained off-the-shelf software to calculate interest. As in the private sector, the debtor would still have a set payment period (30 days) to pay the amount owed without additional interest being assessed during the payment period. We considered calculating and assessing interest on a daily basis but determined this would be prohibitively expensive and administratively burdensome for Medicare contractors, providers and beneficiaries.

D. Conclusion

This proposed rule is not a major rule. It would not change the way overpayments or underpayments are

determined. It would not have a significant impact on a substantial number of rural hospitals. Since a partial period would no longer be considered a full 30-day period, interest assessed on amounts owed to us would be reduced. Therefore, this proposed rule would reduce State, local, and tribal government expenditures. The proposed rule does not impose any direct requirement costs on State and local governments and does not preempt State law or have any Federalism implications.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed regulation was reviewed by the Office of Management and Budget.

List of Subjects Affected

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405, subpart C, continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1351, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

2. In § 405.378, paragraph (b)(2) is revised to read as follows:

§ 405.378 Interest charges on overpayments and underpayments to providers, suppliers, and other entities.

* * * * *

(b) * * *

(1) * * *

(2) Interest will accrue from the date of the final determination as defined in paragraph (c) of this section, and will either be charged on the overpayment balance or paid on the underpayment balance for each full 30-day period that payment is delayed.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

3. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Insurance Coverage That Limits Medicare Payment; General Provisions

4. In § 411.24, paragraph (m)(2)(iii) is revised to read as follows:

§ 411.24 Recovery of conditional payments.

* * * * *

(m) * * *

(2) * * *

(iii) The rate of interest is that provided at § 405.378(d) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 10, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 10, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–18859 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 406

[CMS–4018–P]

RIN 0938–AK94

Medicare Program; Continuation of Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would conform the existing Medicare eligibility regulations to reflect a change made by the Ticket to Work and Work Incentives Improvement Act of 1999. That statutory change, which was implemented effective October 1, 2000, provides working disabled individuals with continued Medicare entitlement for an additional 54 months beyond the previous limit of 24 months, for a total of 78 months of Medicare coverage following the 15th month of the reentitlement period.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–4018–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4018–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8010. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Denise Cox, (410) 786–3195.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document,

at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–9994.

I. Background

Before October 1, 2000, section 226(b) of the Social Security Act (the Act) provided that disabled beneficiaries who continued to engage in substantial gainful activity after completing a trial work period would receive Medicare coverage for 24 months following the 15th month of the reentitlement period.

Effective October 1, 2000, section 202 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. 106–170) amended section 226(b) of the Act to extend the period of Medicare coverage to 78 months after the 15th month of the reentitlement period. Because Section 202 was implemented effective October 1, 2000, Medicare coverage has already been extended to 78 months for all disabled individuals who continue to engage in substantial gainful activity after completing a trial work period. This regulation is intended to codify these statutory provisions.

II. Provisions of the Proposed Regulations

We are proposing to revise § 406.12(e)(2)(i) of our regulations to be consistent with the amended section 226(b) of the Act, which was implemented effective October 1, 2000. We are proposing to change the 24 months of extended Medicare coverage to 78 months of Medicare coverage following the 15th month of the re-entitlement period.

III. Collection of Information Requirements

This proposed rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. This proposed rule would essentially conform our regulations to the plain language of the statute.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate a cost of $100 million to the Medicare trust fund in 2005. This cost estimate includes Medicare payments for disabled beneficiaries who are currently working and entitled to Medicare coverage, as well as payments for individuals who will become entitled to disability benefits in the future and subsequently return to work with extended Medicare coverage. As noted above, the plain language of the statute leaves us no discretion in interpreting this provision, and these costs flow directly from the statute, with or without this proposed rule. Therefore, this proposed rule is not a major rule and does not have a significant economic effect.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any 1 year. For purposes of the RFA, beneficiaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity. This regulation proposes to codify provisions of the Ticket to Work and Work Incentives Improvement Act of 1999 that were implemented on October 1, 2000. Eligible working disabled individuals are already receiving this extended Medicare benefit. This regulation would merely codify statutory provisions that have already been implemented and would not impose any regulatory burdens on small entities. Therefore, we have determined, and we certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This proposed rule would not significantly affect the operations of a substantial number of small rural hospitals because it simply codifies a statutory extension of the period of Medicare entitlement for individuals who are already entitled to and receiving the coverage. Therefore, we have determined, and we certify, that this proposed rule will not have a significant impact on the operation of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. State, local, or tribal governments will not be affected since this proposed rule simply extends the length of time individuals who complete a trial work period and continue to work can receive Medicare benefits.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule, which was implemented effective October 1, 2000, would not have a substantial effect on State or local governments because the extension of Medicare entitlement is for individuals already receiving the coverage.

B. Anticipated Effects

1. Effects on Beneficiaries

Before October 1, 2000, disabled beneficiaries who returned to work received 24 additional months of Medicare coverage following the 15th month of their re-entitlement period. Effective October 1, 2000, these beneficiaries receive 78 months of Medicare coverage following the 15th month of the re-entitlement period.

2. Effects on the Medicare Programs

Anticipated expenditures to the Medicare program have been projected over a 5-year period and are shown in the following chart:

Year	2004	2005	2006	2007	2008
Cost [1]	100	110	130	140	160
Disabled individuals affected [2]	35,000	39,000	42,000	45,000	48,000

[1] Rounded to the nearest 10 million.
[2] Rounded to nearest thousand.

C. Alternatives Considered

We considered excluding individuals whose disability benefit entitlement, and thus Medicare coverage, should have ended September 30, 2001 or earlier, but determined that it would be appropriate to extend the additional Medicare coverage to all beneficiaries who were entitled to Medicare as of October 1, 2000. The aggregate economic effect of this approach is negligible.

In accordance with the provisions of Executive Order 12866, this proposed regulation was reviewed by the Office of Management and Budget.

List of Subjects Affected in 42 CFR Part 406

Health facilities, Medicare.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR, chapter 4, part 406, subpart B as set forth below:

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

Subpart B—Hospital Insurance Without Monthly Premiums

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 406.12, revise the introductory text to paragraph (e)(2) and revise paragraph (e)(2)(i) to read as follows:

§ 406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.

* * * * *

(e) * * *

(2) *Duration of continued Medicare entitlement.* If an individual's entitlement to disability benefits or status as a qualified disabled railroad retirement beneficiary ends because he or she engaged in, or demonstrated the ability to engage in, substantial gainful activity after the 36 months following the end of the trial work period, Medicare entitlement continues until the earlier of the following:

(i) The last day of the 78th month following the first month of substantial gainful activity occurring after the 15th month of the individual's re-entitlement period or, if later, the end of the month following the month the individual's disability benefit entitlement ends.

* * * * *

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 1, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: March 26, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–19068 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–1185–P]

RIN 0938–AK79

Medicare Program; Elimination of Statement of Intent Procedures for Filing Medicare Claims

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the written statement of intent (SOI) procedures used to extend the time for filing Medicare claims. One of the goals of our regulatory reform efforts is to update our regulations based on recent experiences with filing practices and changes in the law. The SOI procedures extend the time to file a claim by 6 months after the month in which a Medicare contractor acknowledges the receipt of a valid statement of intent. We are proposing to remove the SOI procedures because beneficiaries, whom the SOI procedures were intended to benefit, rarely file claims or SOIs. Instead, SOIs are filed in great numbers on behalf of, especially, dually-eligible beneficiaries by States that have previously made Medicaid payments, and occasionally by providers and suppliers. The large number of SOIs imposes a significant expenditure of resources on our contractors, and may also be due to, in part, a lack of careful screening as to whether claims should have initially been presented to and paid by Medicaid. In the absence of an SOI, providers and suppliers (and, where applicable, beneficiaries) would still have from 15–27 months (depending on the date of service) to file claims with Medicare contractors.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1185–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1185–P, P.O. Box 8014, Baltimore, MD 21244–8014.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *David Walczak,* (410) 786–4475.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. by calling (410) 786–7197.

I. Background

The purpose of the statement of intent (SOI) procedures is to extend the timely filing period for the submission of an initial Medicare claim. An SOI, by itself, does not constitute a claim, but rather is a means of extending the deadline for filing a timely and valid claim. Our regulations at 42 CFR 424.32, ''Basic requirements for all claims,'' and § 424.44, ''Time limits for filing claims,'' require that Medicare claims be filed on Medicare-designated claims forms by providers, suppliers, and beneficiaries according to Medicare instructions, by the end of the year following the year in which the services were furnished. Services furnished in the last 3 months of a calendar year are deemed to be furnished in the subsequent calendar year, and thus, in this situation, a provider, supplier, or beneficiary has until December 31 of the second year following the year in which the services were furnished to file claims. Where an SOI has been filed with the appropriate Medicare contractor and the contractor notifies the submitter of the SOI that the SOI is valid (that is, the SOI sufficiently identifies the beneficiary and the items or services rendered), the period in which to file a claim may be extended an additional 6 months after the month of the contractor's notice.

The original regulation on extending the time to file claims for Medicare benefits was codified at 20 CFR 405.1693, and was based on 20 CFR 404.613, which pertained to applications for Social Security benefits. Section 404.613 reflected the Social Security program's interest in allowing virtually any type of writing to be a placeholder for filing a claim for Social Security benefits, provided that a perfected claim was submitted shortly thereafter. Because we believed that Medicare beneficiaries might sometimes need extra time to file a Part B claim due to extenuating circumstances such as poor health or unfamiliarity with the claims filing process, we instituted the SOI procedures.

Experience has shown, however, that beneficiaries rarely submit SOIs directly. Medicare contractors that we surveyed reported no SOIs were directly submitted by beneficiaries for the claims filing period ending December 31, 2000, the latest year for which we have complete data. One reason for the lack of beneficiary-initiated SOIs is the fact that beneficiaries rarely need to file claims. The percentage of Part B claims taken on assignment is about 98 percent today, compared to about 52 percent in 1975. (''Assignment'' is the process by which the physician or other supplier agrees to accept Medicare payment in full for a Part B item or service and file the claim for such payment.) Even for Part B claims not taken on assignment, the law now requires the physician or other supplier to file the claim and provides for sanctions for failure to do so. (*See* section 1848(g)(4) of the Act (42 U.S.C. 1395w–4(g)(4)). The number of Part A claims filed by beneficiaries has always been minimal because the law requires that payment for Part A services generally be made only to providers of services, with very limited exceptions. (*See* section 1814(a) of the Act (42 U.S.C. 1395f(a)). Thus, we believe that the SOI procedures are no longer necessary insofar as they are not serving their intended purpose.

Further, we believe retention of the SOI procedures is counterproductive because of the amount of resources needed to process SOIs submitted by States and because the SOI procedures may encourage or facilitate inappropriate behavior on the part of some States and some providers.

Each year, our contractors receive an enormous number of SOIs that are submitted by States that, having first made Medicaid payments to dually-eligible (that is, Medicare and Medicaid) beneficiaries, subsequently believe that Medicare should be the proper payor. Subsequent to several court decisions in the early 1990s, we permitted States to ''stand in the shoes'' of a dually-eligible beneficiary with respect to claims filing and appeals. For example, States are not required to obtain a beneficiary's signature in order to request providers to file a Part A claim or in order to file an appeal. We also have permitted States and their contractors to file SOIs on the States' behalf or as appointed representatives of the beneficiaries.

The great majority of these SOIs are filed on paper and thus must be manually processed to determine whether they are valid SOIs. (According to our requirements, SOIs must contain detailed and specific information to ensure that a subsequently filed claim was in fact protected by an SOI. (See Program Memorandum AB–03–61)). Also, these SOIs are typically filed in large batches near the end of the timely filing period. All of these factors contribute to the amount of resources and consequent cost incurred in processing the SOIs.

We also believe that the SOI procedures may contribute to States ''paying and chasing'' instead of following the required cost-avoidance procedures, and to the incorrect submission of claims to Medicaid by providers. Our regulations at § 433.139(b) provide that, unless a waiver is granted under § 433.139(e), a State Medicaid agency that has established the probable existence of third party liability (including Medicare liability) at the time a claim for Medicaid payment is presented to it, must reject the claim and return it to the provider for a determination of liability. This process is known as cost avoidance. Some States, however, have been paying thousands of Medicaid claims, despite the knowledge that the beneficiaries involved are entitled to Medicare. These States subsequently identify a significant portion of the claims that they have paid as ones for which Medicare should be the proper payor, and use the SOI procedures to extend the time for providers to file claims.

The fact that such large numbers of claims are paid first by Medicaid and then identified as payable by Medicare raises the inference that providers are not as careful as they should be as to which payor they initially submit claims, and that States, by initially paying such claims, are not fully practicing cost avoidance. We are concerned that the availability of the SOI procedures to extend the time for filing claims is contributing to such inappropriate behavior. We also note that many of the claims filed with Medicare subsequent to the SOIs are ''demand bills,'' which require full medical review, thus increasing the

claims processing cost for our contractors. (Where a provider believes that a service is not covered by Medicare but the beneficiary (or the State as the beneficiary's subrogee) requests the provider to bill Medicare regardless, the provider's Medicare provider agreement requires it to bill Medicare. Such a bill is known as a ''demand bill.'' It requires full medical review because the fact that the provider initially believed that the service was not covered by Medicare raises the question of whether Medicare should pay it.)

Finally, we are cognizant that providers and suppliers sometimes file SOIs. We believe, however, that the filing periods in § 424.44 (15 to 27 months, depending on the date the service was rendered) are more than an adequate amount of time to submit claims.

Based on a survey of SOI requests filed with Medicare contractors for the claims filing period that ended December 31, 2001 (the latest year for which data was available), a very small percentage of claims were processed and paid compared to the total number of SOI requests received. The entire process of receiving an SOI request, determining if an SOI is valid or invalid, examining a later-submitted claim to determine whether the claim was in fact protected by the earlier-submitted SOI, and adjudicating the claim (which, in many cases involves full medical review) are all done manually, and the costs associated with such manual processing are not included in our contractors' budgets (contractors are not required to calculate costs at this level). Therefore, the expenditure of resources and money for such manual processing takes away from the resources needed to do the activities and functions that are included in our contractors' budgets. This proposed rule, if finalized, should have little financial impact on entities that currently submit SOI requests. The rule would simply require these entities to submit their claims six months or so earlier, to comply with Medicare's timely filing requirements (that is, 15 to 27 months after the date of service, depending on the particular month the service was rendered). Given that the requirements for submitting a claim are not much different than submitting a valid SOI, and given that an SOI must be filed within the timely filing period, we anticipate no significant difficulty for such entities to timely submit claims.

Therefore, for the above reasons, we propose removing § 424.45 from our regulations.

II. Provisions of the Proposed Regulation

This regulation proposes to remove 42 CFR 424.45. In the absence of § 424.45, providers, suppliers and beneficiaries still would have from 15–27 months to submit claims to Medicare.

III. Collection of Information Requirements

This document does not impose new information collection and recordkeeping requirements but does remove an old one.

The elimination of §424.45 will reduce costs and workload burdens on providers and suppliers. Specifically, by eliminating the written SOI procedures, we hope to: (1) Reduce provider, supplier and Medicare contractor resource burdens; (2) reduce the burden placed on providers and suppliers from having to resubmit claims, and also from having to reimburse States for claims that were incorrectly paid for by the States; (3) reduce Medicare contractor administrative costs; (4) eliminate changes to existing intermediary/carrier claims payment systems; (5) encourage States to pursue cost-avoidance procedures to ensure that Medicaid is truly the payor of last resort, and thus reduce the need to use ''pay and chase'' procedures; (6) reduce the necessity for medical review at the contractor level; (7) strengthen Medicare and Medicaid program integrity efforts to ensure correct payment the first time; and (8) improve coordination efforts between the Medicare and Medicaid programs.

Given that CMS, in the past, did not specifically quantify the burden associated with this regulatory requirement, we are seeking public comment on the burden reduction associated with the elimination of section 42 CFR 424.45.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, DRDI, DRD–B, Baltimore, MD 21244–1850, ATTN: Julie Brown, CMS–1185-P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Brenda Aguilar, CMS Desk Officer CMS–1185-P.

Comments submitted to OMB may also be emailed to the following address: email: *baguilar@omb.eop.gov*; or faxed to OMB at (202) 395–6974.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1955 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This is not a major rule. This proposed rule will have no substantial economic impact on either costs or savings to the Medicare or Medicaid programs.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million annually (*see* 65 FR 69432). Individuals and States are not included in the definition of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area with fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant impact on a substantial number small entities or rural hospitals because providers and suppliers will still have 15 to 27 months to file claims. Although some providers and suppliers may be small entities or rural hospitals, they are not filing a significant number of SOIs and the information required to file a valid SOI is essentially the same information that providers and suppliers are required to provide when filing a valid claim. We are aware that some States rely on the SOI process at the end of the period for Medicare timely claims filing, to pay and recover expenditures for some of their claims that could have been paid by Medicare. Elimination of the SOI process will require that these States revert to the standard recovery process in the Medicaid regulations to assure that claims are filed within the (15–27 months) Medicare timely filing requirements. While the elimination of the SOI process will not completely eliminate the issue of ''pay and chase,'' we believe it will encourage States to pursue cost-avoidance procedures to ensure that Medicaid is truly the payer of last resort, reducing the need to use ''pay and chase'' procedures. We solicit comment on the impact of this regulation on States and providers.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would not have such an effect on State, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

While this rule would not have a substantial effect on State and local governments, States need to preserve their ability to appropriately recover expenditures for Medicaid benefits that should have been paid by Medicare. We are aware that some States rely on the SOI process, at the end of the period for Medicare timely claims filing, to recover expenditures for some of their claims that could have been paid by Medicare. Elimination of the SOI process will require that these States revert to the standard recovery process in the Medicaid regulations to assure that claims are filled within the (15–27 months) Medicare timely filing requirements.

For the reasons discussed earlier in this regulation, we believe this time frame is adequate to address the States' need for recovering claims from Medicare. We will continue to address the States' concerns on these payment and recoupment issues, through the efforts of the State Technical Advisory Group (TAG) on Third Party Liability, and will continue to consult with States about issues affecting their ability to recover expenditures for some of their claims that should have been covered by Medicare.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

Part 424 is amended as follows:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.45 [Removed]

2. Section 424.45 is removed.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 20, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 18, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–18994 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22 and 90

[WT Docket No. 03–103; FCC 03–95]

Rules To Benefit the Consumers of Air-Ground Telecommunications Services; Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on its rules governing the provision of air-ground telecommunications services on commercial airplanes in order to enhance the options available to the public. The Commission also proposes to revise or eliminate certain Public Mobile Services (PMS) rules that have become obsolete as the result of technological change, increased competition in the Commercial Mobile Radio Services (CMRS), supervening changes to related rules, or a combination of these factors. In addition, the Commission proposes to recodify and amend several rules, and make several conforming amendments to the Commission's rules. The Commission also seeks comment on providing licensees of nationwide paging channels flexibility to provide other services and on whether rules limiting the provision of dispatch service by paging licensees are too restrictive.

DATES: Comments are due on or before September 23, 2003, and reply comments are due on or before October 23, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0920, e-mail *richard.arsenault@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 03–95, in WT Docket No. 03–103, adopted on April 17, 2003, and released on April 28, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. In this Notice of Proposed Rulemaking (NPRM), the Commission undertakes a fundamental reexamination of its rules governing the

provision of air-ground telecommunications services on commercial airplanes (*i.e.*, those rules affecting the availability of wireless services to passengers on commercial aircraft) in order to enhance the options available to the public. The Commission's goal is to promote service provision that better meets the needs of the public for wireless air-ground communications services. At present, only one of the six available licenses in this service is used to serve the public. In this NPRM, the Commission seeks comment on whether any changes to its rules could provide greater opportunities for the competitive provision of these services, leading to lower prices to consumers and increased choices in wireless services and enhancements while traveling by commercial airliner. To this end, the Commission is open to all possible suggestions for fundamental reform. In addition, in this context, the Commission seeks comment regarding whether the commercial air-ground spectrum is being efficiently used, since there is now only one operating licensee in a regulatory plan that originally contemplated six competing service providers. The Commission also seeks comment on possible amendment of rules for other wireless services to permit the provision of commercial air-ground service by licensees of such spectrum.

2. The Commission initiates this proceeding partly in furtherance of its biennial review of regulations pursuant to section 11 of the Communications Act of 1934, as amended. Section 11 requires the Commission to review its regulations applicable to providers of telecommunications service and to ''determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service,'' and to repeal or modify any regulation that the Commission finds no longer necessary in the public interest. This NPRM, in part, is one of the steps in the Commission's implementation of staff recommendations under section 11 for deleting or modifying various part 22 rules. In addition, this NPRM considers other proposals submitted to the Commission by members of the public regarding changes to the part 22 regulations, including those that do not fall within the scope of section 11. The Commission accordingly seeks comment on changes to rules for each of the part 22 services—Paging and Radiotelephone, Rural Radiotelephone, Air-Ground Radiotelephone, and Offshore Radiotelephone—other than cellular as well as its rules governing developmental authorizations. In addition to eliminating unnecessary regulatory hurdles, many of these proposals provide licensees with greater flexibility regarding the use of their spectrum, which in turn leads to greater technical, economic, and marketplace efficiency.

3. In this NPRM, the Commission also proposes to revise or eliminate certain part 22 Public Mobile Services (PMS) rules that may have become obsolete as the result of technological change, increased competition in the Commercial Mobile Radio Services (CMRS), supervening changes to related Commission rules, or a combination of these factors. This NPRM in addition proposes to recodify certain part 22 PMS rules to part 1 of the Commission's rules, amend several of the part 1 rules, and make several conforming amendments to the Commission's part 90 rules.

4. In this NPRM, the Commission also seeks comment on ways to increase flexibility to enable licensees to better serve the public. For example, the Commission seeks comment on providing licensees of nationwide paging channels flexibility to provide other services and on whether its rules limiting the provision of dispatch service by paging licensees are too restrictive.

5. Specifically, to illustrate the proposals outlined above, the NPRM seeks comment on elimination or modification of numerous part 22 technical, operational and service rules. For example, the NPRM tentatively concludes that the directional antenna requirements set forth in § 22.363 and Table C–2 to § 22.361 should be eliminated. In addition to these rule changes, the NPRM seeks comment on elimination of the requirement to file FCC Form 409 (Airborne Mobile RadioTelephone License Application) to apply for authority to operate an airborne station. The NPRM also seeks comment regarding whether § 1.929(c)(1) of the Commission's rules should be amended to specify that expansion of a composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water, on a secondary, non interference basis, should be classified as a minor (rather than major) modification of license. Such reclassification would substantially reduce the filing requirements associated with these license modifications. Finally, the NPRM seeks comment on recodification of § 22.157 (computation of distance) and § 22.159 (computation of terrain elevation) to part 1 of the Commission's rules. Subject to several exceptions, recodification of these rules to part 1 would harmonize the methods for computing distance and terrain elevation applicable to Wireless Radio Services described in parts 1, 20, 21, 22, 24, 27, 80, 87, 90, 95, 97, and 101 so that they are subject to the same requirements.

Procedural Matters

Initial Regulatory Flexibility Analysis

6. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Below contains the IRFA. The Commission requests written public comments on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, the Commission asks a number of questions regarding the prevalence of small businesses in the affected industries.

7. Interested parties must file comments in accordance with the same filing deadlines as comments filed in this NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

Ex Parte Rules—Permit-but-Disclose Proceedings

8. This is a permit-but-disclose notice and comment rulemaking proceeding. The Commission's rules permit ex parte presentations, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.2306(a).

Comment Dates

9. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before September 23, 2003, and reply comments October 23, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://www.fcc.gov/e-file/ecfs.html,* or by filing paper copies.

10. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should including the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

11. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., TW–A325, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. Parties who choose to file by paper should also submit their comments on diskette. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contract, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, D.C. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

13. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365 or via e-mail to bmillin@fcc.gov. This NPRM can also be downloaded at *http://www.fcc.gov/wtb.*

Further Information

14. The World Wide Web addresses/URLs that the Commission gives here were correct at the time this document was prepared but may change over time. They are included herein in addition to the conventional citations as a convenience to readers. The Commission is unable to update these URLs after adoption of this NPRM, and readers may find some URLs to be out of date as time progresses. The Commission also advises readers that the only definitive text of FCC documents is the one that is published in the FCC Record. In case of discrepancy between the electronic documents cited here and the FCC Record, the version in the FCC Record is definitive.

Initial Paperwork Reduction Act of 1995 Analysis

15. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995. Public, agency, and OMB comments are due at the same time as other comments on this NPRM (which are due 60 days from the date of publication of this NPRM in the **Federal Register**). Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (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 the respondents, including the use of automated collection techniques or other forms of technology.

16. Written comments by the public on the proposed and/or modified information collections are due September 23, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 23, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Kim Johnson, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov.*

Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM, provided in paragraph 79 of the item. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

18. In this NPRM, the Commission undertakes a fundamental reexamination of its rules governing the provision of air-ground telecommunications services on commercial airplanes (*i.e.*, those rules affecting the availability of wireless services to passengers on commercial aircraft) in order to enhance the options available to the public. The Commission's goal is to promote service provision that better meets the needs of

the public for wireless air-ground communications services. At present, only one of the six available licenses in this service is used to serve the public. In this NPRM, the Commission seeks comment on whether any changes to its rules could provide greater opportunities for the competitive provision of these services, leading to lower prices to consumers and increased choices in wireless services and enhancements while traveling by commercial airliner. To this end, the Commission is open to all possible suggestions for fundamental reform. In addition, in this context, the Commission seeks comment regarding whether the commercial air-ground spectrum is being efficiently used, since there is now only one operating licensee in a regulatory plan that originally contemplated six competing service providers. The Commission also seeks comment on possible amendment of rules for other wireless services to permit the provision of commercial air-ground service by licensees of such spectrum.

19. The Commission initiates this proceeding partly in furtherance of its biennial review of regulations pursuant to section 11 of the Communications Act of 1934, as amended. Section 11 requires the Commission to review its regulations applicable to providers of telecommunications service and to ''determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service,'' and to repeal or modify any regulation that the Commission finds no longer necessary in the public interest. This NPRM, in part, is one of the steps in the Commission's implementation of staff recommendations under section 11 for deleting or modifying various part 22 rules. In addition, this NPRM considers other proposals submitted to the Commission by members of the public regarding changes to the part 22 regulations, including those that do not fall within the scope of section 11. The Commission accordingly seeks comment on changes to rules for each of the part 22 services—Paging and Radiotelephone, Rural Radiotelephone, Air-Ground Radiotelephone, and Offshore Radiotelephone—other than cellular as well as its rules governing developmental authorizations. In addition to eliminating unnecessary regulatory hurdles, many of these proposals provide licensees with greater flexibility regarding the use of their spectrum, which in turn leads to greater technical, economic, and marketplace efficiency.

20. In this NPRM, the Commission also proposes to revise or eliminate certain part 22 Public Mobile Services (PMS) rules that may have become obsolete as the result of technological change, increased competition in the Commercial Mobile Radio Services (CMRS), supervening changes to related Commission rules, or a combination of these factors. This NPRM in addition proposes to recodify certain part 22 PMS rules to part 1 of the Commission's rules, amend several of the part 1 rules, and make several conforming amendments to the Commission's part 90 rules.

21. In this NPRM, the Commission also seeks comment on ways to increase flexibility to enable licensees to better serve the public. For example, the Commission seeks comment on providing licensees of nationwide paging channels flexibility to provide other services and on whether its rules limiting the provision of dispatch service by paging licensees are too restrictive.

22. Specifically, to illustrate the proposals outlined above, the NPRM seeks comment on elimination or modification of numerous part 22 technical, operational and service rules. For example, the NPRM tentatively concludes that the directional antenna requirements set forth in § 22.363 and Table C–2 to § 22.361 should be eliminated. In addition to these rule changes, the NPRM seeks comment on elimination of the requirement to file FCC Form 409 (Airborne Mobile RadioTelephone License Application) to apply for authority to operate an airborne station. The NPRM also seeks comment regarding whether § 1.929(c)(1) of the Commission's rules should be amended to specify that expansion of a composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water, on a secondary, non interference basis, should be classified as a minor (rather than major) modification of license. Such reclassification would substantially reduce the filing requirements associated with these license modifications. Finally, the NPRM seeks comment on recodification of § 22.157 (computation of distance) and § 22.159 (computation of terrain elevation) to part 1 of the Commission's rules. Subject to several exceptions, recodification of these rules to part 1 would harmonize the methods for computing distance and terrain elevation applicable to Wireless Radio Services described in parts 1, 20, 21, 22, 24, 27, 80, 87, 90, 95, 97, and 101 so that they are subject to the same requirements.

Legal Basis

23. The potential actions on which comment is sought in this NPRM would be authorized under sections 1, 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, and 303(r).

Description and Estimate of the Number of Small Entities Subject to the Rules

24. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

25. This NPRM could result in rule changes that, if adopted, would affect small businesses that currently are or may become Paging and Radiotelephone, Rural Radiotelephone, Air-Ground Radiotelephone, or Offshore Radiotelephone service providers regulated under subparts E, F, G, and I of part 22 of the Commission's rules, respectively. The proposed changes to § 22.7 of the Commission's rules would, if adopted, affect Cellular Radiotelephone Service providers that are regulated under subpart H of part 22 of the Commission's rules. In addition, pursuant to § 90.493(b) of the Commission's rules, paging licensees on exclusive channels in the 929–930 MHz bands are subject to the licensing, construction, and operation rules set forth in part 22. As this rulemaking proceeding applies to multiple services, the Commission will analyze the number of small entities affected on a service-by-service basis, and discuss the number of small equipment manufacturing entities that are potentially affected by the proposed rule changes.

26. *Cellular Radiotelephone Service.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the

SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. There are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent Trends in Telephone Service data, 858 carriers reported that they were engaged in the provision of cellular service, PCS, or SMR telephony, which are grouped together in the data. Of these, 567 have more than 1,500 employees; the remaining 291 are small business concerns under the SBA's definition. However, because data for cellular service, PCS, and SMR telephony are reported collectively, the Commission is unable at this time to estimate how many of the 291 small business concerns are cellular service carriers. Consequently, the Commission estimates that there are 291 or fewer small cellular service carriers that may be affected by the proposal to amend § 22.7, if adopted.

27. *Paging and Radiotelephone Service.* The Commission has defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. A ''very small business'' is defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $3 million. The SBA has approved these definitions. An auction of MEA licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won licenses. An auction of MEA and EA paging licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. In this auction, high bids were placed by 130 entities that qualify as small businesses under the Commission's definition. Licenses have been granted to 128 of these entities, and the applications of the other entities remain pending. Thus, in addition to existing licensees, should the Commission adopt the rule changes proposed in the NPRM, 130 license winners in the recent auction would be affected small entities.

28. In addition, the SBA defines small paging companies as an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service data, 576 carriers reported that they were engaged in the provision of paging and messaging service. Only 19 of the 576 carriers have more than 1,500 employees; the remaining 557 are small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 557 small paging carriers that may be affected by the proposed rules, if adopted. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

29. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service. Accordingly, the Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

30. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission has not adopted a definition of small business specific to the Offshore Radiotelephone Service. Accordingly, the Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, i.e., an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

31. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission therefore uses the SBA definition applicable to cellular and other wireless telecommunication companies, i.e., an entity employing no more than 1,500 persons. There are approximately 1000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

32. *Equipment Manufacturers.* Some of the proposed actions in the NPRM could also affect equipment manufacturers. The Commission does not know how many equipment manufacturers are in the current market. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular, paging, air-ground, offshore, and rural radiotelephone equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus, the number of cellular, paging, air-ground, offshore, and rural radiotelephone equipment manufacturers is lower than 920. Under SBA regulations, a ''communications equipment manufacturer'' must have a total of 1000 or fewer employees in order to qualify as a small business concern. Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91 percent) of these firms had 750 or fewer employees and would therefore be classified as small entities. Using the Commission's current estimate of equipment manufacturers and the previous percentage estimate of small entities, the Commission estimates that this current action may affect approximately 837 small equipment manufacturers.

33. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.

34. This NPRM neither proposes nor anticipates any additional reporting, recordkeeping, or other compliance measures. If certain of the proposals in the NPRM (*e.g.*, eliminating the § 22.655 requirement that certain paging licensees file channel usage reports, or elimination of the requirement to file FCC Form 409 (Airborne Mobile Radiotelephone License Application) to apply for authority to operate an airborne station) are adopted as a result of this proceeding, then the Commission contemplates a reduction in these requirements. The reduction would be the same for all entities.

35. In addition to these rule changes, the NPRM also seeks comment regarding whether § 1.929(c)(1) of the Commission's rules should be amended to specify that expansion of a composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water on a secondary, non interference basis should be classified as a minor (rather than major) modification of license. Such

reclassification, if adopted, would substantially reduce the filing requirements associated with these license modifications.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

37. As stated earlier, a number of the Commission's part 22 technical, operational and service rules may be determined to be outdated. Therefore, modifying or eliminating these rules should decrease the costs associated with regulatory compliance for service providers, provide additional flexibility in the provision of service and manufacturing of equipment, and enhance the market demand for some services. The Commission therefore anticipates that, although it seems likely that there will be a significant economic impact on a substantial number of small entities, there will be no adverse economic impact on small entities. In fact, certain of the proposed rule changes may particularly benefit small entities. For example, the NPRM proposes that § 1.929(c)(1) should be amended to specify that expansion of the composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water, on a secondary, non interference basis to any geographic area licensee in the same area, is a minor, not a major, modification of license. Although adoption of such an amendment would benefit both small and large entities (because minor modifications are self-effectuating, while major modifications require FCC approval), the majority of businesses in these three radio services are small entities. The NPRM further proposes that a site-based licensee expanding its CIC over water as defined above could do so on a permissive basis, with no notification to the Commission required. Many licensees in these services are small entities that could benefit from this rule change.

38. In the NPRM, then, the Commission has set forth various options it is considering for each rule, from modifying rules to eliminating them altogether. As discussed in the NPRM, the effect of any rule change on the regulatory burden of licensees will be a significant criterion in determining appropriate Commission action. With the exception of the reexamination of the rules governing the provision of air-ground telecommunications services on commercial airplanes in order to enhance the options available to the public, the entire intent underlying the Commission's actions here is to lessen the levels of regulation, consistent with its mandate for undertaking biennial reviews. The Commission seeks comment on any additional appropriate alternatives and especially alternatives that may further reduce economic impacts on small entities.

Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

39. None.

Ordering Clauses

40. Pursuant to the authority contained in sections 1, 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, and 303(r), this Notice of Proposed Rulemaking is *adopted.*

41. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

List of Subjects in 47 CFR Parts 1, 22 and 90

42. Administrative practice and procedure, Communications common carriers, Communications equipment, Metric system , Radio, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 22, and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.903 is amended by revising paragraph (c) to read as follows:

§ 1.903 Authorization required.

* * * * *

(c) *Subscribers.* Authority for subscribers to operate mobile or fixed stations in the Wireless Radio Services, except for certain stations in the Rural Radiotelephone Service, is included in the authorization held by the licensee providing service to them. Subscribers are not required to apply for, and the Commission does not accept, applications from subscribers for individual mobile or fixed station authorizations in the Wireless Radio Services. Individual authorizations are required to operate rural subscriber stations in the Rural Radiotelephone Service, except as provided in § 22.703 of this chapter. Individual authorizations are required for end users of certain Specialized Mobile Radio Systems as provided in § 90.655 of this chapter. In addition, certain ships and aircraft are required to be individually licensed under Parts 80 and 87 of this chapter. See §§ 80.13, 87.18 of this chapter.

3. Section 1.929 is amended by revising paragraph (c)(1) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(c) * * *

(1) In the Paging and Radiotelephone Service, Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service (SMR), any change that would increase or expand the applicant's existing composite interference contour, except extensions of a composite interference contour over bodies of water that extend beyond county boundaries (*i.e.*, including but not limited to oceans, the Gulf of Mexico, and the Great Lakes) on a secondary basis.

* * * * *

4. Section 1.958 is added to subpart F of part 1 to read as follows:

§ 1.958 Distance computation.

The method given in this section must be used to compute the distance between any two locations, except that, for computation of distance involving stations in Canada and Mexico, methods for distance computation specified in

the applicable international agreement, if any, must be used instead. The result of a distance calculation under parts 21 and 101 of this chapter must be rounded to the nearest tenth of a kilometer. The method set forth in this paragraph is considered to be sufficiently accurate for distances not exceeding 475 km (295 miles).

(a) Convert the latitudes and longitudes of each reference point from degree-minute-second format to degree-decimal format by dividing minutes by 60 and seconds by 3600, then adding the results to degrees.

$$LATX_{dd} = DD \div \frac{MM}{60} + \frac{SS}{3600}$$

$$LONX_{dd} = DDD \div \frac{MM}{60} + \frac{SS}{3600}$$

(b) Calculate the mean geodetic latitude between the two reference points by averaging the two latitudes:

$$ML = \frac{LAT1_{dd} \div LAT2_{dd}}{2}$$

(c) Calculate the number of kilometers per degree latitude difference for the mean geodetic latitude calculated in paragraph (b) of this section as follows:

KPD sublat = 111.13209 − 0.56605 cos 2ML +0.00120 cos 4ML

(d) Calculate the number of kilometers per degree of longitude difference for the mean geodetic latitude calculated in paragraph (b) of this section as follows:

KPD sublon = 111.41513 cos ML − 0.09455 cos 3ML +0.00012 cos 5ML

(e) Calculate the North-South distance in kilometers as follows:

NS = KPD sublat × (LAT1 subdd − LAT2 subdd)

(f) Calculate the East-West distance in kilometers as follows:

EW = KPD sublon x (LON1 subdd − LON2 subdd)

(g) Calculate the distance between the locations by taking the square root of the sum of the squares of the East-West and North-South distances:

$$DIST = \sqrt{NS^2 + EW^2}$$

(h) Terms used in this section are defined as follows:

(1) LAT1 subdd and LON1 subdd are the coordinates of the first location in degree-decimal format.

(2) LAT2 subdd and LON2 subdd are the coordinates of the second location in degree-decimal format.

(3) ML is the mean geodetic latitude in degree-decimal format.

(4) KPD sublat is the number of kilometers per degree of latitude at a given mean geodetic latitude.

(5) KPD sublon is the number of kilometers per degree of longitude at a given mean geodetic latitude.

(6) NS is the North-South distance in kilometers.

(7) DIST is the distance between the two locations, in kilometers.

5. Section 1.959 is added to subpart F of part 1 to read as follows:

§ 1.959 Computation of average terrain elevation.

Except as otherwise specified in § 90.309(a)(4) of this chapter, average terrain elevation must be calculated by computer using elevations from a 30 second point or better topographic data file. The file must be identified. If a 30 second point data file is used, the elevation data must be processed for intermediate points using interpolation techniques; otherwise, the nearest point may be used. In cases of dispute, average terrain elevation determinations can also be done manually, if the results differ significantly from the computer derived averages.

(a) Radial average terrain elevation is calculated as the average of the elevation along a straight line path from 3 to 16 kilometers (2 and 10 miles) extending radially from the antenna site. If a portion of the radial path extends over foreign territory or water, such portion must not be included in the computation of average elevation unless the radial path again passes over United States land between 16 and 134 kilometers (10 and 83 miles) away from the station. At least 50 evenly spaced data points for each radial should be used in the computation.

(b) Average terrain elevation is the average of the eight radial average terrain elevations (for the eight cardinal radials).

(c) For locations in Dade and Broward Counties, Florida, the method prescribed above may be used or average terrain elevation may be assumed to be 3 meters (10 feet).

§ 1.1102 [Amended]

6. Section 1.1102 is revised by removing paragraph (16)(h).

§ 1.2003 [Amended]

7. Section 1.2003 is revised by removing the phrase ''FCC 409 Airborne Mobile Radio Telephone License Application;''

PART 22—PUBLIC MOBILE SERVICES

8. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

9. Section 22.1 is amended by revising paragraph (b) to read as follows:

§ 22.1 Basis and purpose.

* * * * *

(b) *Purpose.* The purpose of these rules is to establish the requirements and conditions under which domestic radio stations may be licensed and used in the Public Mobile Services.

10. Section 22.3 is amended by revising paragraph (b) to read as follows:

§ 22.3 Authorization required.

* * * * *

(b) Authority for subscribers to operate mobile or fixed stations in the Public Mobile Services, except for certain stations in the Rural Radiotelephone Service, is included in the authorization held by the licensee providing service to them. Subscribers are not required to apply for, and the FCC does not accept applications from subscribers for, individual mobile or fixed station authorizations in the Public Mobile Services, except that individual authorizations are required to operate rural subscriber stations in the Rural Radiotelephone Service, except as provided in § 22.703.

11. Section 22.7 is revised to read as follows:

§ 22.7 General eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part. Applications are granted only if the applicant is legally, financially, technically and otherwise qualified to render the proposed service.

12. Amend § 22.99 as follows:

a. Revise the definitions of Air-Ground Radiotelephone Service, Cellular Radiotelephone Service, Channel, Communications channel, Control channel, Ground station, Offshore Radiotelephone Service, Public Mobile Services, and Rural Radiotelephone Service.

b. Remove the definitions of ''Meteor burst propagation mode,'' ''Radio Common Carrier,'' and ''Wireline Common Carrier.''

c. Remove the reference to ''Air-ground Radiotelephone Service'' and add in its place ''Air-Ground Radiotelephone Service'' wherever it appears.

The revisions read as follows:

§ 22.99 Definitions.

* * * * *

Air-Ground Radiotelephone Service. A radio service in which licensee are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

* * * * *

Cellular Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide cellular service for hire to the general public. This service was formerly titled Domestic Public.

* * * * *

Channel. The portion of the electromagnetic spectrum assigned by the FCC for one emission. In certain circumstances, however, more than one emission may be transmitted on a channel.

* * * * *

Communications channel. In the Cellular Radiotelephone and Air-Ground Radiotelephone Services, a channel used to carry subscriber communications.

* * * * *

Control channel. In the Cellular Radiotelephone Service and the Air-Ground Radiotelephone Service, a channel used to transmit information necessary to establish or maintain communications. In the other Public Mobile Services, a channel that may be assigned to a control transmitter.

* * * * *

Ground station. In the Air-Ground Radiotelephone Service, a stationary transmitter that provides service to airborne mobile stations.

* * * * *

Offshore Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide radio telecommunication services for hire to subscribers on structures in the offshore coastal waters of the Gulf of Mexico.

* * * * *

Public Mobile Services. Radio services in which common carriers are authorized to offer and provide mobile and related fixed radio telecommunication services for hire to the public.

* * * * *

Rural Radiotelephone Service. A radio service in which licensee are authorized to offer and provide radio telecommunication services for hire to subscribers in areas where it is not feasible to provide communication services by wire or other means.

* * * * *

13. Section 22.143 is amended by revising paragraph (d)(4) to read as follows:

§ 22.143 Construction prior to grant of application.

* * * * *

(d) * * *

(4) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, the licensee has notified the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1), filed a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC at WTB, Database Management Division, Analysis and Development Branch, 1120 Fairfield Road, Gettysburg, PA 17325 or electronically via the FCC Antenna Structure Registration homepage, *http://wireless.fcc.gov/antenna/;*

* * * * *

§ 22.157 [Removed]

14. Remove § 22.157.

§ 22.159 [Removed]

15. Remove § 22.159.

§ 22.161 [Removed]

16. Remove § 22.161.

17. Section 22.351 is revised to read as follows:

§ 22.351 Channel assignment policy.

The channels allocated for use in the Public Mobile Services are listed in the applicable subparts of this part. Channels and channel blocks are assigned in such a manner as to facilitate the rendition of service on an interference-free basis in each service area. Except as otherwise provided in this part, each channel or channel block is assigned exclusively to one licensee in each service area. All applicants for, and licensees of, stations in the Public Mobile Services shall cooperate in the selection and use of channels in order to minimize interference and obtain the most efficient use of the allocated spectrum.

18. Section 22.352 is amended by revising the undesignated paragraph and paragraph (c)(7) to read as follows:

§ 22.352 Protection from interference.

Public Mobile Service stations operating in accordance with applicable FCC rules and the terms and conditions of their authorizations are normally considered to be non-interfering.

* * * * *

(c) * * *

(7) *In-building radiation systems.* No protection is provided against interference to the service of in-building radiation systems.

§ 22.361 [Removed]

19. Section 22.361 is removed.

§ 22.363 [Removed]

20. Section 22.363 is removed.

§ 22.373 [Removed]

21. Section 22.373 is removed.

§ 22.379 [Removed]

22. Section 22.379 is removed.

§ 22.381 [Removed]

23. Section 22.381 is removed.

§ 22.383 [Removed]

24. Section 22.383 is removed.

§ 22.415 [Removed]

25. Section 22.415 is removed.

26. Section 22.503 is amended by adding paragraph (g)(4) to read as follows:

§ 22.503 Paging geographic area authorizations.

* * * * *

(g) * * *

(4) The application is for a minor modification of license to expand a licensee's composite interference contour over water on a secondary, non-interference basis under § 1.929(c)(1) of this chapter.

* * * * *

§ 22.539 [Removed]

27. Section 22.539 is removed.

28. Section 22.563 is revised to read as follows:

§ 22.563 Provision of rural radiotelephone service.

Channels in the frequency ranges 152.03–152.81, 157.77–158.67, 454.025–454.650 and 459.025–459.650 MHz, inclusive, are also allocated for assignment in the Rural Radiotelephone Service.

§ 22.569 [Removed]

29. Section 22.569 is removed.

§ 22.591 [Amended]

30. Section 22.591 is amended by removing the table entitled ''Microwave channels,'' and by removing and reserving paragraph (b).

31. Section 22.593 is revised to read as follows:

§ 22.593 Effective radiated power limits.

The effective radiated power of fixed stations operating on the channels listed in § 22.591 must not exceed 150 Watts.

32. Section 22.601 is amended by revising the undesignated paragraph to read as follows:

§ 22.601 Assignment of microwave channels.

Assignment of the 2110–2130 and 2160–2180 MHz channels (formerly listed in § 22.591) is subject to the transition rules in § 22.602. No new systems will be authorized under this part.

* * * * *

33. Section 22.602 is amended by revising the undesignated paragraph to read as follows:

§ 22.602 Transition of the 2110–2130 and 2160–2180 MHz channels to emerging technologies.

The 2110–2130 and 2160–2180 MHz microwave channels (formerly listed in § 22.591) have been allocated for use by emerging technologies (ET) services. No new systems will be authorized under this part. The rules in this section provide for a transition period during which existing Paging and Radiotelephone Service (PARS) licensees using these channels may relocate operations to other media or to other fixed channels, including those in other microwave bands. For PARS licensees relocating operations to other microwave bands, authorization must be obtained under Part 101 of this chapter.

* * * * *

34. Section 22.625 is amended by revising paragraph (a) to read as follows:

§ 22.625 Transmitter locations.

* * * * *

(a) *928–960 MHz.* In this frequency range, the required minimum distance separation between co-channel fixed transmitters is 113 kilometers (70 miles).

* * * * *

35. Section 22.655 is amended by revising paragraph (a) to read as follows:

§ 22.655 Channel usage.

* * * * *

(a) In Alaska, channels 42.40, 44.10, 44.20 and 45.90 MHz are allocated for assignment to transmitters providing rural radiotelephone service using meteor burst propagation modes, subject to the provisions of § 22.729.

* * * * *

36. Section 22.725 is amended by revising the section heading and the text of the undesignated paragraph to read as follows:

§ 22.725 Channels for conventional rural radiotelephone stations and basic exchange telephone radio systems.

The following channels are allocated for paired assignment to transmitters that provide conventional rural radiotelephone service and to transmitters in basic exchange telephone radio systems. These channels may be assigned for use by central office or rural subscriber stations as indicated, and interoffice stations. These channels may be assigned also for use by relay stations in systems where it would be impractical to provide rural radiotelephone service without the use of relay stations. All channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

* * * * *

37. Section 22.757 is revised to read as follows:

§ 22.757 Channels for basic exchange telephone radio systems.

The channels listed in § 22.725 are also allocated for paired assignment to transmitters in basic exchange telephone radio systems.

§ 22.805 [Removed]

38. Section 22.805 is removed.

39. Section 22.815 is revised to read as follows:

§ 22.815 Construction period for general aviation ground stations.

The construction period (see § 1.946) for general aviation ground stations is 12 months.

§ 22.871 [Removed]

40. Section 22.871 is removed.

41. Section 22.1003 is revised to read as follows:

§ 22.1003 General eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this subpart. Applications are granted only if the applicant is legally, financially, technically and otherwise qualified to render the proposed service.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

42. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

43. Section 90.309 is amended by revising paragraph (a)(1) to read as follows:

§ 90.309 Tables and figures.

(a) * * *

(1) Using the method specified in § 1.958 of this chapter, determine the distances (i) between the proposed land mobile base station and the protected cochannel television station and (ii) between the proposed land mobile base station and the protected adjacent channel television station. If the exact mileage does not appear in table A for protected cochannel television stations (or table B for channel 15 in New York and Cleveland and channel 16 in Detroit) or table E for protected adjacent channel television stations, the next lower mileage separation figure is to be used.

* * * * *

[FR Doc. 03–18643 Filed 7–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 03–122; FCC 03–110]

Unlicensed Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the rules governing the operation of unlicensed National Information Infrastructure (U–NII) devices, including Radio Local Area Networks (RLANs), to make available an additional 255 megahertz of spectrum in the 5.47–5.725 GHz band. This will increase the spectrum available to unlicensed devices in the 5 GHz region of the spectrum by nearly 80%, and, it represents a significant increase in the spectrum available for unlicensed devices across the overall radio spectrum. We believe that the increased available capacity gained from access to an additional 255 megahertz of spectrum, coupled with the ease of deployment and operational flexibility provided by our U–NII rules, will foster the development of a wide range of new and innovative unlicensed devices and lead to increased wireless broadband access and investment.

DATES: Written comments are due September 3, 2003, and reply comments are due September 23, 2003.

ADDRESSES: Federal Communications, Marlene H. Dortch, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing information.

FOR FURTHER INFORMATION CONTACT: Ahmed Lahjouji, Office of Engineering and Technology, (202) 418–2061; TTY (202) 418–2989, e-mail: *Ahmed.Lahjouji@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* ET Docket 03–122, FCC 03–122, adopted May 15, 2003, and released June 4, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may

be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Proposed Rule Making

1. The *Notice of Proposed Rule Making,* proposed to amend part 15 of the rules governing the operation of unlicensed National Information Infrastructure (U–NII) devices, including Radio Local Area Networks (RLANs), to make available an additional 255 megahertz of spectrum in the 5.47–5.725 GHz band. This will increase the spectrum available to unlicensed devices in the 5 GHz region of the spectrum by nearly 80%, and, it represents a significant increase in the spectrum available for unlicensed devices across the overall radio spectrum. This action responds to the petition for rule making submitted by the Wireless Ethernet Compatibility Alliance (WECA—now known as the Wi-Fi Alliance). We believe that the increased available capacity gained from access to an additional 255 megahertz of spectrum, coupled with the ease of deployment and operational flexibility provided by our U-NII rules, will foster the development of a wide range of new and innovative unlicensed devices and lead to increased wireless broadband access and investment. Also, this proposal would align the frequency bands used by U–NII devices with those in other parts of the world, thus decreasing development and manufacturing costs for U.S. manufacturers by allowing for the same digital communications products to be used in most other parts of the world.

2. In addition to proposing to make more spectrum available for use by U–NII devices, we proposed several other changes to the Table of Frequency Allocations to accommodate the needs of other radio services operating in the 5 GHz region of the spectrum. Specifically, we proposed to modify the U.S. Table of Frequency Allocations in Part 2 of the rules to upgrade the status of the Federal Government Radiolocation service to primary in the 5.46–5.65 GHz band. We also proposed to upgrade the status of the non-Federal Government radiolocation to primary in the 5.47–5.65 GHz band. We further proposed to add primary allocations for the Federal Government and secondary allocations for the non-Federal Government Space Research Service (active) (SRS) in the 5.35–5.57 GHz band and the Earth Exploration-Satellite Service (active) (EESS) in the 5.46–5.57 GHz band. We also proposed to modify certain technical requirements for U–NII devices in the part 15 rules to protect various radio services against harmful interference. Our proposals are consistent with the U.S. World Radiocommunication Conference 2003 (WRC–03) position regarding this band.

Proposed Changes to the Table of Frequency Allocations

3. We proposed to implement the following allocations consistent with the U.S. proposals to the WRC–03. First, we proposed to modify the U.S. Table of Frequency Allocations in part 2 of the rules to upgrade the status of the Federal Government Radiolocation service to primary in the 5.46–5.65 GHz band. We will similarly upgrade the status of the non-Federal Government Radiolocation service to co-primary in the 5.47–5.65 GHz band so that we do not disadvantage non-Government licensees. These bands are used by non-Federal Government broadcast weather radar stations. We note that the Federal Radiolocation service already has a primary allocation in the 5.35–5.46 GHz band. The elevation in status for Federal Government Radiolocation along with the requirement for DFS as described below will ensure that these existing services are protected from interference from U–NII devices. We further proposed to add primary allocations for the Federal Government and secondary allocations for the non-Federal Government for the Space Research Service (active) (SRS) in the 5.35–5.57 GHz band and the Earth Exploration-Satellite Service (active) (EESS) in the 5.46–5.57 GHz band. We seek comment on these proposals.

4. In the U.S., part 15 unlicensed devices including U–NII devices operate on a non-interference basis and do not operate within radio services listed in the Table of Frequency Allocations. Instead, part 15 devices share spectrum with radio services on the basis that they may not cause any harmful interference and must accept any interference that may be received. Although the WECA petition and comments request an allocation of spectrum for unlicensed U–NII devices, they also request operation under part 15 of the rules. We thus propose to modify our part 15 rules to allow U–NII devices to operate in the 5.470–5.725 GHz band on a non-interference basis, and seek comment on this proposal. We note that WRC–03 is considering a Mobile allocation for the 5.150–5.350 GHz and 5.470–5.725 GHz bands and that some administrations would need a Mobile allocation in the international Table of Frequency Allocations for RLANs or HiperLANs to operate in the bands. Therefore, the U.S. position for WRC–03 supports adoption of an international Mobile allocation so that these devices may operate throughout the world.

5. Table 1 on page 7 of the NPRM summarizes all the allocation proposed herein. We seek comment on the proposed changes to the Table of Frequency Allocations. Commenters are requested to provide a technical analysis to substantiate any claims of interference which may be caused by operations of U–NII devices under these proposed rules.

Proposed Changes to U–NII Rules

6. *Technical requirements.* Under the existing part 15 U–NII rules, there are three different frequency sub-bands available to U–NII devices, each with its own set of technical requirements (*e.g.*, transmit power and antenna gain), based on its sharing environment. U–NII devices operating in the 5.150–5.250 GHz sub-band are restricted to indoor operations and a power limit of 200 mW e.i.r.p. in order to protect co-channel Mobile Satellite Service (MSS) feeder links. Because of the relatively low power limit and indoor usage requirement, this sub-band is most suitable for U–NII devices providing communications links between devices separated by short distances indoors,

such as between computing devices within a room or in adjoining rooms. The 5.250–5.350 GHz sub-band may be used indoors and outdoors and is limited to 1 watt e.i.r.p. This sub-band is shared with the Federal Government Radiolocation Service, Earth Exploration Satellite Service and Space Research Service. This U–NII sub-band is suitable for communications links both within and between buildings such as for campus-wide local area networks. The 5.725–5.825 GHz sub-band may be used indoors and outdoors with power levels up to 4 watts e.i.r.p. This U–NII sub-band is shared with Federal Government Radiolocation, Amateur, ISM, and other part 15 devices and is suitable for communications links within and among buildings and over long distances through use of high-gain antennas.

7. We propose to add the 5.470–5.725 GHz band to the U–NII bands with the same technical requirements that apply to the existing 5.250–5.350 GHz U–NII sub-band. This is consistent with the WECA petition and the U.S. position for the upcoming WRC–03. The Federal Government believes that the power must be limited to 1 watt e.i.r.p. to protect incumbent systems. We also believe that this will best provide for communications among devices within and among buildings where demand is greatest. We expect that the 100 MHz of spectrum that is already available at 5.725–5.825 GHz will remain sufficient for higher power operations. We note in particular that operations over longer distances employ directional antennas that allow for high reuse and sharing of the spectrum, which mitigates the need for additional spectrum for these types of operations. We seek comment on this analysis.

8. ARRL argues that WECA, in its petition, has not demonstrated that U–NII devices operating in the 5.650–5.725 GHz band will avoid causing interference to the Amateur Radio service, which operates on a secondary basis in this band. Our review of ARRL's web site indicates that amateur use of this band is limited to propagation beacons and possibly some limited satellite use. Roeder comments that there is little ready made Amateur equipment for this band and that there are only a few rare mountain top users of this band. We observe that amateurs already share the 5.725–5.825 GHz band with U–NII devices and we are unaware of any complaints of interference. Further, we have proposed to permit a lower e.i.r.p. for U–NII devices operating in the 5.470–5.725 GHz band (*i.e.*, 1 watt e.i.r.p.) than for the existing 5.725–5.825 GHz band (*i.e.*, 4 watts e.i.r.p.). Therefore, we believe that U–NII devices can operate in 5.650–5.725 GHz band without causing interference. Finally, U–NII devices in this band would continue to operate under part 15 of our rules and would be required to eliminate any harmful interference that may occur to the Amateur Radio service. We tentatively conclude that the proposals in the NPRM are adequate to protect the Amateur Radio service from interference. We seek comment on this tentative conclusion.

9. In addition to applying the existing technical requirements for the 5.250–5.350 GHz sub-band to the new 5.470–5.725 GHz band, to ensure protection to existing vital DoD radar operations, we are proposing that U–NII devices operating in both the existing 5.250–5.350 GHz sub-band and the new 5.470–5.725 GHz sub-band employ a listen-before-talk mechanism called dynamic frequency selection (DFS). DFS is an interference avoidance mechanism. Prior to the start of any transmissions, and through constant monitoring, the device (*e.g.*, RLAN) equipped with such a mechanism monitors the radio environment for a radar's presence. If the U–NII device determines that a radar is present, it either moves to another channel or enters a sleep mode if no channels are available. We proposed that U–NII devices be required to continuously monitor their environment for the presence of radars both prior to and during operation. DoD concurs that the use of DFS at the thresholds proposed will provide the necessary protection for its vital radar systems.

10. For systems, where multiple devices operate under a central controller, we propose that only the central controller be required to have DFS capability. We recognize that there may be devices or architectures developed, where remote devices are not under the control of a master device. We seek comment on requiring such devices to have DFS. We also invite comment on how to identify remote units that operate only under the control of a central controller.

11. The U–NII device's ability to reliably detect a radar's presence in the channel depends greatly on the pulse characteristics of the radar. The time for which the radar occupies the U–NII channel (dwell time) also influences the detection probability. The problem arises when the dwell time is very short as is the case for frequency hopping radars. In this case, the subject radar signal is characterized as a receive signal strength (RSS) equal to or greater than the DFS detection threshold level within the U–NII device's channel bandwidth (*e.g.*, typically 18 MHz for devices operating under IEEE 802.11(a)). The radar signal has a bandwidth of 1 MHz and a pulse repetition rate (PRR) in the range 200–4000 pulses/s, where the nominal pulse width is in the range of 1 to 20 microseconds. We seek comment on the minimum number of pulses and the observation time required for reliable detection.

12. We are also proposing to require a transmit power control (TPC) mechanism in the 5.470–5.725 GHz band to further reduce the potential for impact on EESS and SRS operations. TPC is a feature intended to adjust the transmitter's output power based on the signal level at the receiver. TPC will allow the transmitter to operate at less than the maximum power for most of the time. As the signal level at the receiver rises or falls, the transmit power will be decreased or increased as needed. Because TPC equipped devices adjust their transmit power to the minimum necessary to achieve the desired performance, the average interference power from a large number of devices is reduced, the power consumption is minimized and network capacity is increased. Consistent with the U.S. proposals to the WRC–03, we are proposing that U–NII devices employ a TPC mechanism that will ensure a 6 dB drop in power when triggered. We seek comment on what the appropriate triggering mechanism will be. For example, should TPC seek to keep a receiver parameter such as received signal strength, bit error rate, or block error rate below a certain threshold? How long will a pair of U–NII devices have to adjust their link powers? Will it be necessary to require U–NII devices to employ TPC if their maximum power is 3 dB or more below the maximum permitted under the rules? How should TPC be applied to system configurations where multiple devices may operate under the control of a central device.

13. *Test procedures.* We seek comment on appropriate test procedures needed to ensure compliance with the DFS and TPC requirements proposed in this proceeding. We note that the operational requirements for DFS are well defined in the applicable industry standards. We observe that while TPC has been agreed to as a general requirement, its operational details are still under development. Therefore, we particularly seek comment on the means by which devices can be tested for compliance with TPC requirements to implement reduced power without placing unnecessary restrictions on device design. We also seek comment on the extent to which devices under development that may have unique or

novel transmission waveforms may require special measurement instrumentation settings (*e.g.*, integration times) that differ from those used for measuring compliance for existing U–NII band devices.

14. *Transition period for U–NII equipment operating in the 5.250–5.350 GHz band.* U–NII devices currently operate in this band without DFS capability. As a result, we recognize that some period of time will be needed to implement the new DFS requirement for U–NII equipment operating in the 5.250–5.350 GHz band. We propose that the DFS requirement for the 5.250–5.350 GHz band effective for U–NII equipment that is certified after one year from the date of publication of the Report and Order in this proceeding in the **Federal Register**. We believe that this should be sufficient time for equipment devices operating in the 5.250–5.350 GHz band that are imported or shipped in interstate commerce on or after two years from the date of publication in the **Federal Register** comply with these standards. We believe that most affected products will be redesigned within this three-year time frame and that compliance with this proposal would not cause an unreasonable burden on industry. Comments are requested on these proposed transition provisions. We are proposing to require that U–NII equipment operating in the new spectrum at 5.470–5.725 GHz meet all the technical requirements, including DFS and TPC, on the effective date of these rules.

Order Clauses

15. Pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336, the notice of proposed rule making is hereby adopted.

16. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this notice of proposed rule making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980 as amended,[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (''*NPRM*''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 31 of the item. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IFRA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

18. This *NPRM* proposes to amend part 15 of our rules governing the operation of unlicensed National Information Infrastructure (U–NII) devices, including Radio Local Area Networks (RLANs), to make available an additional 255 megahertz of spectrum in the 5.47–5.725 GHz band for the growth and development of unlicensed wireless broadband networks. This action responds to the petition for rule making submitted by the Wireless Ethernet Compatibility Alliance (WECA—now known as Wi-Fi Alliance).[4]

19. In addition to proposing to make more spectrum available for use by U–NII devices, the Notice also proposes several other rules changes in the 5 GHz band that will further facilitate the use of this band for U–NII devices, while at the same time ensuring sufficient protection for various incumbents in the band. Specifically, it proposes to modify the U.S. Table of Frequency Allocations in part 2 of the rules to upgrade the status of the Federal Government Radiolocation service to primary in the 5.46–5.65 GHz band. It similarly proposes to upgrade the non-Federal Government radiolocation service to primary in the 5.47–5.65 GHz band. It further proposes to add primary allocations for the Federal Government and the non-Federal Government Space Research Service (active) (SRS) in the 5.35–5.46 GHz band and the Earth Exploration-Satellite Service (active) (EESS) and SRS (active) in the 5.46–5.57 GHz band.

20. The *NPRM* also proposes to modify certain technical requirements for U–NII devices in the part 15 rules. In addition to applying the existing technical requirements for the 5.250–5.350 GHz sub-band to the new 5.470–5.725 GHz band, it proposes that U–NII devices operating in both the existing 5.250–5.350 GHz sub-band and the new 5.470–5.725 GHz sub-band employ a listen-before-talk mechanism called dynamic frequency selection (DFS). DFS is an interference avoidance mechanism. Prior to start of any transmissions, and through constant monitoring, the device (*e.g.*, RLAN) equipped with such a mechanism monitors the radio environment for a radar's presence. If the U–NII device determines that a radar signal is present, it either moves to another channel or enters a sleep mode if no channels are available. The Notice seeks comments regarding alternative DFS requirements for various U–NII operating conditions. For example, in point-to-multi-point systems, it may not be necessary that DFS be required for both the controlling station and slaves (*e.g.*, devices designed as clients only) as long as the DFS timing requirements are met. The *NPRM* invites comments on whether DFS should be applied to the controlling stations (*e.g.*, Hub, AP) as well as to slaves.

21. The NPRM also proposes to require a transmit power control (TPC) mechanism in the 5.470–5.725 GHz band to further reduce the potential for impact on EESS and SRS operations. TPC is a feature intended to adjust the transmitter's output power based on the signal level at the receiver. TPC will allow the transmitter to operate at less than the maximum power for most of the time. As the signal level at the receiver rises or falls, the transmit power will be decreased or increased as needed. Because TPC equipped devices adjust their transmit power to the minimum necessary to achieve the desired performance, the average interference power from a large number of devices is reduced, the power consumption is minimized and network capacity is increased. The NPRM seeks comments regarding what the appropriate triggering mechanism might be and how long the U–NII device might need to adjust its power? It also asks for comments on the necessity of requiring all U–NII devices to employ TPC. For example, in some point-to-multipoint system configurations, U–NII devices may be designed to function only with a particular controller or hub. Should only the controlling point or hub be required to employ TPC in this configuration? Some U–NII devices will be designed to operate with a maximum e.i.r.p. below what the rules allow.

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–112, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

[2] *See* 5 U.S.C. 603(a).

[3] *See* 5 U.S.C. 603(a).

[4] *See* WECA Petition for Rulemaking, RM–10371, filed on January 15, 2002, Public Notice Report No. 2527, January 29, 2002.

Should these devices be exempt from the TPC requirement?

22. The NPRM seeks comment on appropriate test procedures needed to ensure compliance with the DFS and TPC requirements proposed in this proceeding. It notes that the operational requirements for DFS are well defined in the applicable industry standards.[5] It particularly seeks comment on means by which devices can be tested for compliance with TPC requirements to implement reduced power without placing unnecessary restrictions on device design. It also seeks comment on the extent to which devices under development with unique and novel transmission waveforms may require special measurement instrumentation settings (*e.g.*, integration times) that differ from those used for measuring compliance for existing U–NII band devices.

23. U–NII devices currently operate in the 5.250–5.350 GHz band without DFS capability. As a result, some period of time will be needed to implement the new DFS requirement for U–NII equipment operating in the 5.250–5.350 GHz band. The *NPRM* proposes that the DFS requirement for the 5.250–5.350 GHz band effective for U–NII equipment that is certified after one year from the date of publication of the Report and Order in this proceeding in the **Federal Register**. It also proposes to require that all U–NII devices operating in the 5.250–5.350 GHz band that are imported or shipped in interstate commerce on or after three years from the date the adopted rules are published in the **Federal Register** comply with these standards. The Commission believes that most affected products will be redesigned within this three-year time frame and that compliance with this proposal would not cause an unreasonable burden on industry. Comments are requested on these proposed transition provisions. The *NPRM* proposes that U–NII equipment operating in the new spectrum at 5.470–5.725 GHz meet all the technical requirements, including DFS and TPC, on the effective date of these rules.

B. Legal Basis

24. This action is taken pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336.

[5] *See supra* note 36.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

25. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act.[7] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets any additional criteria established by the Small Business Administration (SBA).[8]

26. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[9] Nationwide, as of 1992, there were approximately 275,801 small organizations.[10] The term ''small governmental jurisdiction'' is defined as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[11] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[12] This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small governmental jurisdictions is approximately 75,955 or fewer.

27. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition application to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees in order to qualify as a small business concern.[13] Census Bureau indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and the 778 of these firms have fewer than 750 employees and would be classified as small entities.[14] We do not believe this action would have a negative impact on small entities that manufacture unlicensed U–NII devices. Indeed, we believe the actions should benefit small entities because it should make available increased business opportunities to small entities. We request comment on these assessments.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

28. Part 15 transmitters are already required to be authorized under the Commission's certification procedures as a prerequisite to marketing and importation. Under the proposals in the *NPRM,* manufacturers will be required to demonstrate that U–NII devices operating in the bands 5.250–5.350 GHz and 5.470–5.725 GHz have Dynamic Frequency Selection Capabilities. Additionally, U–NII devices operating in the 5.470–5.725 GHz band must exhibit Transmit Power Control capabilities. The reporting and recordkeeping requirements associated with these equipment authorizations would not be changed by the rule revisions proposed in this *NPRM.*

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[15]

[6] *See* U.S.C. 603(b)(3).

[7] *Id.* 601(3).

[8] *Id.* 632.

[9] 5 U.S.C. 601(4).

[10] 1992 Economic Census, U.S. Bureau of the Census. Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[11] 5 U.S.C. 601(5).

[12] 1995 Census of Governments, U.S. Census Bureau, United States Department of Commerce, Statistical Abstract of the United States (2000).

[13] *See* 13 CFR 121.20 NAICS Code 33420 (SIC Code 3663). Although SBA now uses the NAICS classifications, instead of SIC, the size standard remains the same.

[14] *See* U.S. Dept. of Commerce, *1992 census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663 (NAICS Code 34220).

[15] 5 U.S.C. 603(c).

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.

31. None.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 15 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

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

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is proposed to be amended by revising pages 56 and 57.

§ 2.106 Table of Frequency Allocations.

The proposed revisions and additions read as follows:

* * * * *

BILLING CODE 6712–01–P

5150-5250 AERONAUTICAL RADIONAVIGATION FIXED-SATELLITE (Earth-to-space) 5.447A 5.446 5.447 5.447B 5.447C	5.367 US211 US307 US344 US370	5150-5250 AERONAUTICAL RADIO-NAVIGATION US260 FIXED-SATELLITE (Earth-to-space) 5.447A US344 5.447C US211 US307	
5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.447D 5.448 5.448A	5250-5350 RADIOLOCATION 5.333 US110 G59	5250-5350 Radiolocation 5.333 US110	Private Land Mobile (90)
5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active) 5.448 5.448A			
5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B AERONAUTICAL RADIONAVIGATION 5.449 Radiolocation	5350-5460 AERONAUTICAL RADIO-NAVIGATION 5.449 RADIOLOCATION G56 SPACE RESEARCH (active) US48	5350-5460 AERONAUTICAL RADIO-NAVIGATION 5.449 Radiolocation Space research (active) US48	Aviation (87) Private Land Mobile (90)
5460-5470 RADIONAVIGATION 5.449 Radiolocation	5460-5470 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION 5.449 SPACE RESEARCH (active) US49 US65	5460-5470 RADIONAVIGATION 5.449 Radiolocation Earth exploration-satellite (active) Space research (active) US49 US65	Private Land Mobile (90)
5470-5650 MARITIME RADIONAVIGATION Radiolocation 5.450 5.451 5.452	5470-5570 MARITIME RADIONAVIGATION EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH active) US50 US65 See next page for 5570-5650 MHz	5470-5570 MARITIME RADIONAVIGATION Earth exploration-satellite (active) Space research (active) US50 US65 See next page for 5570-5650 MHz	Maritime (80) Private Land Mobile (90) See next page for 5570-5650 MHz

International Table			United States Table		FCC Rule Part(s)
Region 1	Reg	n 2 Region 3	Federal Government	Non-Federal Government	
See previous page for 5470-5650 M			5570-5600 MARITIME RADIONAVIGATION RADIOLOCATION G56 US50 US65	5570-5600 MARTIME RADIONAVIGATION RADIOLOCATION US50 US65	Maritime (80) Private Land Mobile (90)
			5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS RADIOLOCATION US51 G56 5.452 US65	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS RADIOLOCATION US51 5.452 US65	
5650-5725 RADIOLOCATION Amateur Space research (deep space) 5.282 5.451 5.453 5.454 5.455			5650-5925 RADIOLOCATION G2	5650-5830 Amateur 5.150 5.282	ISM Equipment (18) Amateur (97)
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur 5.150 5.451 5.453 5.455 5.456	572 RAI Am 5.15	5830 OLOCATION ur 5.453 5.455			
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth) 5.150 5.451 5.453 5.455 5.456	583 RAI Amateur Amateur-satellite (space-to-Earth) 5.150 5.453 5.455	5850 OLOCATION		5830-5850 Amateur Amateur-satellite (space-to-Earth) 5.150	
			5.150 US245	5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur 5.150	ISM Equipment (18) Private Land Mobile (90) Amateur (97)
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE			5925-6425	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space)	Satellite Communications (25) Fixed Microwave (101)
			6425-6525 5.440 5.458	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)

BILLING CODE 6712-01-C

PART 15—RADIO FREQUENCY DEVICES

3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

4. Section 15.37 amended by adding paragraph (l) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(l) U–NII Equipment operating in the 5.25—5.35 GHz band that are authorized under the certification procedure on or after [1 year after publication of R&O in ET Docket No. 03–122 in the **Federal Register**] shall comply with the DFS requirement specified in § 15.407. All U–NII Equipment operating in the 5.25–5.35 GHz band that are manufactured or imported on or after [2 years from publication of R&O in ET Docket No. 03–122 in the **Federal Register**] shall comply with the DFS requirement specified in § 15.407. Equipment authorized, imported or manufactured prior to these dates shall comply with the requirements for U–NII Equipment operating in the 5.25–5.35 GHz band that were in effect immediately prior to [60 days after publication of R&O in ET Docket No. 03–122 in the **Federal Register**].

5. Section 15.401 is revised to read as follows:

§ 15.401 Scope.

This subpart sets out the regulations for unlicensed National Information Infrastructure (U–NII) devices operating in the 5.15—5.35 GHz, 5.47—5.725 GHz and 5.725—5.825 GHz bands.

4. Section 15.403 is revised to read as follows:

§ 15.403 Definitions.

(a) *Access Point (AP).* A U–NII transceiver that operates either as a bridge in a peer-to-peer connection or as a connector between the wired and wireless segments of the network.

(b) *Available Channel.* A radio channel on which a *Channel Availability Check* has not identified the presence of a radar.

(c) *Average Symbol Envelope Power.* The average symbol envelope power is the average, taken over all symbols in the signaling alphabet, of the envelope power for each symbol.

(d) *Channel Availability Check.* A check during which the U–NII device listens on a particular radio channel to identify whether there is a radar operating on that radio channel.

(e) *Channel Move Time.* The time needed by a U–NII device to cease all transmissions on the Operating Channel upon detection of a signal above the DFS detection threshold. Transmissions during this period will consist of intermittent management and control signals required to facilitate vacating the Operating Channel.

(f) *Digital modulation.* The process by which the characteristics of a carrier wave are varied among a set of predetermined discrete values in accordance with a digital modulating function as specified in document ANSI C63.17–1998.

(g) *Dynamic Frequency Selection (DFS)* is a mechanism that detects signals from other systems and avoids co-channel operation with these systems, notably radar systems. The DFS process shall be required to provide a uniform spreading of the loading over all the available channels.

(h) *DFS Detection Threshold.* The required detection level defined by detecting a received signal strength (RSS) that is greater than a threshold specified, within the U–NII device channel bandwidth.

(i) *Emission bandwidth.* For purposes of this subpart the emission bandwidth shall be determined by measuring the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, that are 26 dB down relative to the maximum level of the modulated carrier. Determination of the emissions bandwidth is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(j) *In-Service Monitoring.* Monitoring of the *Operating Channel* to check that a co-channel radar has not moved or started operation within range of the U-NII device.

(k) *Non-Occupancy Period.* The required period in which, once a channel has been recognized as containing a radar signal by a U–NII device, the channel will not be selected as an available channel.

(l) *Operating Channel.* Once a U–NII device starts to operate on an *Available Channel* then that channel becomes the *Operating Channel.*

(m) *Peak Power Spectral Density.* The peak power spectral density is the maximum power spectral density, within the specified measurement bandwidth, within the U–NII device operating band.

(n) *Peak Transmit Power.* The maximum transmit power as measured over an interval of time of at most 30/B (where B is the 26 dB emission bandwidth of the signal in hertz) or the transmission pulse duration of the device, whichever is less, under all conditions of modulation.

(o) *Power Spectral Density.* The power spectral density is the total energy output per unit bandwidth from a pulse or sequence of pulses for which the transmit power is at its peak or maximum level, divided by the total duration of the pulses. This total time does not include the time between pulses during which the transmit power is off or below its maximum level.

(p) *Pulse.* A pulse is a continuous transmission of a sequence of modulation symbols, during which the average symbol envelope power is constant.

(q) *RLAN.* Radio Local Area Network.

(r) *Transmit Power.* The total energy transmitted over a time interval of at most 30/B (where B is the 26 dB emission bandwidth of the signal in hertz) or the duration of the transmission pulse, whichever is less, divided by the interval duration.

(s) *Transmit Power Control (TPC).* A feature that enables a U-NII device to dynamically switch between several transmission power levels in the data transmission process.

(t) *U–NII devices.* Intentional radiators operating in the frequency bands 5.15—5.35 GHz and 5.470—5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions.

7. Section 15.407 is amended by revising paragraph (a)(2), redesignating paragraphs (b)(3) through (b)(6) as paragraphs (b)(4) through (b)(7), adding a new paragraph (b)(3) and paragraph (h) to read as follows:

§ 15.407 General Technical Requirements.

(a) * * *

(2) For the 5.25–5.35 GHz and 5.47–5.725 GHz bands, the peak transmit power over the frequency bands of operation shall not exceed the lesser of 250 mW or 11 dBm + 10log B, where B is the 26 dB emission bandwidth in megahertz. In addition, the peak power spectral density shall not exceed 11 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the peak transmit power and the peak power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

* * * * *

(b) * * *

(3) For transmitters operating in the 5.47–5.725 GHz band: all emissions outside of the 5.47–5.725 GHz band

shall not exceed an EIRP of -27 dBm/MHz.

* * * * *

(h) *Transmit Power Control (TPC) and Dynamic Frequency Selection (DFS).*

(1) *Transmit power control (TPC).* U–NII devices operating in the 5.47–5.725 GHz band shall employ a TPC mechanism. The U–NII device is required to have the capability to operate at least 6 dB below the mean EIRP value of 30 dBm.

(2) *Dynamic Frequency Selection (DFS).* U–NII devices operating in the 5.25–5.35 GHz and 5.47–5.725 GHz bands shall employ a DFS mechanism to detect the presence of radar systems and to avoid co-channel operation with radar systems. The minimum DFS detection threshold for devices with a maximum e.i.r.p. of 200 mW to 1 W is -64 dBm. For devices that operate with less than 200 mW e.i.r.p. the minimum detection threshold is -62 dBm. The detection threshold is the received power averaged over 1 microsecond referenced to a 0 dBi antenna.

(i) *Operational Modes.* The DFS requirement applies to the following operational modes:

(A) The requirement for channel availability check time applies in the master operational mode; and

(B) The requirement for channel move time applies in both the master and slave operational modes.

(ii) *Channel Availability Check Time.* A U–NII device shall check if there is a radar system already operating on the channel before it can initiate a transmission on a channel and when it has to move to a new channel. The U–NII device may start using the channel if no radar signal with a power level greater than the interference threshold values, as listed in (h)(2) of this section, is detected within 60 seconds.

(iii) *Channel Move Time.* After a radar's presence is detected, all transmissions shall cease on the operating channel within 10 seconds. Transmissions during this period will consist of normal traffic for typically less than 100 ms and a maximum of 200ms after detection of the radar signal. In addition, intermittent management and control signals can be sent during the remaining time to facilitate vacating the operating channel. The aggregate time of the intermittent management and control signals are typically less than 20 ms.

(iv) *Non-occupancy Period.* A channel that has been flagged as containing a radar system, either by a channel availability check or in-service monitoring, is subject to a non-occupancy period of at least 30 minutes. The non-occupancy period starts at the time when the radar system is detected.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH92

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service, are proposing regulations that would authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations for the covered period are similar to and include all activities covered by the 3-year Beaufort Sea incidental take regulations that were effective from March 30, 2000, through March 31, 2003 (65 FR 16828). We are proposing that this rule be effective for approximately 16 months from date of issuance.

We will also be conducting an evaluation for a new 5-year regulation based on a petition received from Industry on August 23, 2002. We will work to assess the effects of Industry activities for the requested period (5 years) and expect to publish a longer term proposed rule during the period that this rule is in effect.

We propose a finding that the total expected takings of polar bear and Pacific walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species and no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives. We base this finding on the results of 9 years of monitoring and evaluating interactions between polar bears, Pacific walrus, and Industry, and on oil spill trajectory models, polar bear density models, and independent population recruitment and survival models that determine the likelihood of impacts to polar bears should an accidental oil release occur. We are seeking public comments on this proposed rule.

DATES: Comments on this proposed rule must be received by August 25, 2003.

ADDRESSES: You may submit comments by any of the following methods:

1. By mail to: Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

2. By Fax to: (907) 786–3816.

3. By Internet, electronic mail by sending to: *FW7MMM@fws.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AH92'' and your name and return address in your Internet message subject header. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at U.S. Fish and Wildlife Service, Office of Marine Mammals Management, (907)–786–3810 or 1–800–362–5148.

4. By hand-delivery to: Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

Comments and materials received in response to this action are available for public inspection during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; Telephone 907–786–3810 or 1–800–362–5148; or Internet *craig_perham@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 1371(a)(5)(A) of the Marine Mammal Protection Act (Act) (16 U.S.C. 1361–1407) gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service (we) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (you) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region. If regulations allowing such incidental taking are issued, we can issue Letters of Authorization (LOA) to conduct activities under the provisions of these regulations when requested by citizens of the United States.

We propose to authorize the incidental taking of polar bears and Pacific walrus based on our proposed

finding using the best scientific evidence available that the total of such taking for the regulatory period will have no more than a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives. These regulations set forth: (1) Permissible methods of taking; (2) the means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

The term ''take,'' as defined by the Act, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill, any marine mammal. Harassment as defined by the Act, as amended in 1994, ''means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild'' (the Act calls this type of harassment Level A harassment), ''or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' (the Act calls this type of harassment Level B harassment). As a result of 1986 amendments to the Act, we amended 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) with a final rule published on September 29, 1989. Section 18.27(c) included a revised definition of ''negligible impact'' and a new definition for ''unmitigable adverse impact'' as follows. Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Unmitigable adverse impact means ''an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.'' Industry conducts activities such as oil and gas exploration, development, and production in marine mammal habitat and, therefore, risks violating the prohibitions on the taking of marine mammals.

Although Industry is under no legal requirement to obtain incidental take authorization, since 1993 Industry has chosen to seek authorization to avoid the uncertainties of taking marine mammals associated with conducting activities in marine mammal habitat.

On November 16, 1993 (58 FR 60402), we issued final regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when such taking(s) occurred in the course of Industry activities during year-round operations in the area described later in this proposed rule in the section ''Description of Geographic Region.'' The regulations were effective for 18 months. At the same time, the Secretary of the Interior directed us to develop, and then begin implementation of, a polar bear habitat conservation strategy before extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. On August 14, 1995, we completed development of and issued our Habitat Conservation Strategy for Polar Bears in Alaska to ensure that the regulations met with the intent of Congress. On August 17, 1995, we issued the final rule and notice of availability of a completed final polar bear habitat conservation strategy (60 FR 42805). We then extended the regulations for an additional 42 months to expire on December 15, 1998.

On August 28, 1997, BP Exploration (Alaska), Inc., submitted a petition for itself and for ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company for rulemaking pursuant to section 101(a)(5)(A) of the Act, and section 553(e) of the Administrative Procedure Act (APA; 5 U.S.C. 553). Their request sought regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when takings occurred during Industry operations in Arctic Alaska. Specifically, they requested an extension of the incidental take regulations that begin at 50 CFR 18.121 for an additional 5-year term from December 16, 1998, through December 15, 2003. The geographic extent of the request was the same as that of previously issued regulations that begin at 50 CFR 18.121 that were in effect through December 15, 1998 (see above).

The petition to extend the incidental take regulations included two new oil fields (Northstar and Liberty). Plans to develop each field identified a need for an offshore gravel island and a buried sub-sea pipeline to transport crude oil to existing onshore infrastructure. The Liberty prospect was subsequently abandoned, while the Northstar prospect moved toward production. At the time, based on the preliminary nature of the information related to sub-sea pipelines published in a Draft Environmental Impact Statement (DEIS) for the Northstar project, we were unable to make a finding of negligible impact and issue regulations for the full 5-year period as requested by Industry.

On November 17, 1998, we published proposed regulations (63 FR 63812) to allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus in the Beaufort Sea and northern coast of Alaska for a 15-month period. These regulations did not authorize the incidental take of polar bears and Pacific walrus during construction or operation of sub-sea pipelines in the Beaufort Sea. On January 28, 1999, we issued final regulations effective through January 30, 2000 (64 FR 4328).

The U.S. Army Corps of Engineers finalized the Northstar Final Environmental Impact Statement (FEIS) in February 1999. On February 3, 2000, we issued regulations effective through March 31, 2000 (65 FR 5275), in order to finalize the subsequent longer term regulations without a lapse in coverage. After a thorough analysis of the Northstar FEIS and other data related to oil spills, on March 30, 2000, we issued regulations effective for a 3-year duration, through March 31, 2003 (65 FR 16828). This assessment included a polar bear oil spill risk analysis, a model that simulated oil spills and their subsequent effects on estimated polar bear survival on the basis of distribution in the Beaufort Sea. The likelihood of polar bear mortality caused by oil spills during different seasons (open-water, ice-covered, broken ice) was also analyzed. A 3-year period was selected, rather than a 5-year period, due to the potential development of additional offshore oil and gas production sites, such as the offshore Liberty Development, which would need increased oil spill analysis if development proceeded. The Liberty Development Plan was subsequently withdrawn by the operator to be re-evaluated.

Between January 1994 and March 2003, we issued 223 LOAs for oil and gas related activities. Activities covered by LOAs included: exploratory operations, such as seismic surveys and drilling; development activities, such as construction and remediation; and production activities for operational fields. Between January 1, 1994, and March 31, 2000, 77 percent (n=89) of LOAs issued were for exploratory

activities, 10 percent (n=11) were for development, and 13 percent (n=15) were for production activities. Less than a third (32 of 115) of these activities actually sighted polar bears, and approximately two-thirds of sightings (171 of 258) occurred during production activities.

Summary of Current Request

On August 23, 2002, the Alaska Oil and Gas Association (AOGA), on behalf of its members, requested that we promulgate regulations for nonlethal incidental take of small numbers of Pacific walrus and polar bears pursuant to section 101(a)(5) of the Act. The request was for a period of 5 years, from March 31, 2003, through March 31, 2008. Members of AOGA include Alyeska Pipeline Service Company; Marathon Oil Company; Anadarko Petroleum Corporation Petro Star, Inc.; BP Exploration (Alaska) Inc.; Phillips Alaska, Inc.; ChevronTexaco Corporation; Shell Western E&P Inc.; Cook Inlet Pipe Line Company; Tesoro Alaska Company; Cook Inlet Region, Inc.; TotalFinaElf E&P USA; EnCana Oil & Gas (USA) Inc.; UNOCAL; Evergreen Resources, Inc.; Williams Alaska Petroleum, Inc.; ExxonMobil Production Company; XTO Energy, Inc.; and Forest Oil Corporation. Along with their request for incidental take authorization, Industry has also developed and implemented polar bear conservation measures. The geographic region defined in Industry's 2002 application is described later in this proposed rule in the section titled ''Description of Geographic Region.''

We are proposing to issue new regulations that would remain in effect for, 16 months, from date of issuance, to ensure that we have adequate time to thoroughly assess effects of Industry activities over the longer period (5 years) requested by Industry. New LOAs may be issued after the new finding is made. We will assess the effects of Industry activities for the requested period (5 years) and expect to publish a longer-term proposed rule during the term described in this proposed rule.

Prior to issuing regulations at 50 CFR part 18, subpart J, we must evaluate the level of industrial activities, their associated potential impacts to polar bears and Pacific walrus, and their effects on the availability of these species for subsistence use.

To minimize disruptions related to a lapse in the regulations, we propose developing a short-term rule, while a longer term rule is being developed to address anticipated future actions by Industry. The recent petition and discussions with Industry indicate that industrial activities during the effective period of this rule will be similar to those analyzed in the most recent regulations, with no new major Industry developments anticipated.

Description of Proposed Regulations

The regulations that we are proposing include: permissible methods of taking; measures to ensure the least practicable adverse impact on the species and the availability of these species for subsistence uses; and requirements for monitoring and reporting. The geographic coverage and the scope of industrial activities assessed in these proposed regulations are the same as those in the regulations we issued on March 30, 2000. New LOAs will be issued if the proposed regulations become final.

These proposed regulations would not authorize the actual activities associated with oil and gas exploration, development, and production. Rather, they would authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The U.S. Minerals Management Service, the U.S. Army Corps of Engineers, and the U.S. Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for activities on State lands and in State waters.

If we issue final incidental take regulations, persons seeking taking authorization for particular projects will apply for an LOA to cover take associated with exploration, development, and production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-related activity within the area covered by these regulations may request an LOA. Applicants for LOAs must submit a plan to monitor the effects of authorized activities on polar bears and walrus. Applicants for LOAs must also include a Plan of Cooperation on the availability of these species for subsistence use by Alaska Native communities that may be affected by Industry operations. The purpose of the Plan is to minimize the impact of oil and gas activity on the availability of the species or the stock to ensure that subsistence needs can be met. The Plan must provide the procedures on how Industry will work with the affected Native communities, including a description of the necessary actions that will be taken to: (1) Avoid interference with subsistence hunting of polar bears and Pacific walrus, and (2) ensure continued availability of these species for subsistence use.

We will evaluate each request for an LOA for a specific activity and specific location, and may condition each LOA for that activity and location. For example, an LOA issued in response to a request to conduct activities on barrier islands with known active bear dens, or a history of polar bear denning, may be conditioned to require avoidance of a specific den site by 1 mile, intensified monitoring in a 1-mile buffer around the den, or avoiding the area until a specific date. More information on applying for and receiving an LOA can be found at 50 CFR 18.27(f).

Description of Geographic Region

These proposed regulations would allow Industry to incidentally take small numbers of polar bear and Pacific walrus within the same area, referred to as the Beaufort Sea Region, as covered by our previous regulations. This region is defined by a north/south line at Barrow, Alaska, and includes all Alaska State waters and all Outer Continental Shelf waters, east of that line to the Canadian border. The onshore region is the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is not included in the area covered by these regulations.

Description of Activities

In accordance with 50 CFR 18.27, Industry submitted a request for the promulgation of incidental take regulations pursuant to section 101(a)(5)(A) of the Act. Activities covered in this proposed regulation include Industry exploration, development, and production of oil and gas, as well as environmental monitoring associated with these activities. These proposed regulations do not authorize incidental take for offshore production sites other than the previously evaluated Northstar Production area.

Exploration activities may occur onshore or offshore and include: geological surveys; geotechnical site investigations; reflective seismic exploration; vibrator seismic data collection; airgun and water gun seismic data collection; explosive seismic data collection; vertical seismic profiles; subsea sediment sampling; construction and use of drilling structures such as caisson-retained islands, ice islands, bottom-founded structures (steel drilling caisson: SDC), ice pads and ice roads; oil spill prevention, response, and cleanup; and site restoration and remediation.

Exploratory drilling for oil is an aspect of exploration activities. Exploratory drilling and associated support activities and features include: transportation to site; setup of 90–100 person camps and support camps (requiring lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, camp moves, landing strips, aircraft support, health and safety facilities, data recording facility and communication equipment); building gravel pads; building gravel islands with sandbag and concrete block protection, ice islands, and ice roads; gravel hauling; gravel mine sites; road building; pipelines; electrical lines; water lines; road maintenance; buildings; facilities; operating heavy equipment; digging trenches; burying pipelines and covering pipelines; sea lift; water flood; security operations; dredging; moving floating drill units; helicopter support; and drill ships such as the SDC, CANMAR Explorer III, and the Kulluk.

Development activities associated with oil and gas industry operations include: road construction; pipeline construction; waterline construction; gravel pad construction; camp construction (personnel, dining, lodging, maintenance shops, water plants, wastewater plants); transportation (automobile, airplane, and helicopter traffic; runway construction; installation of electronic equipment); well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation.

Production activities include: personnel transportation (automobiles, airplanes, helicopters, boats, rolligons, cat trains, and snowmobiles); and unit operations (building operations, oil production, oil spills, cleanup, restoration, and remediation).

Alaska's North Slope encompasses an area of 88,280 square miles and contains 8 major oil and gas fields in production: Endicott/Duck Island; Prudhoe Bay; Kuparuk River; Point McIntyre; Milne Point; Badami; Northstar; and Colville River. These 8 fields include 21 current satellite oilfields: Sag Delta North; Eider; North Prudhoe Bay; Lisburne; Niakuk; Niakuk-Ivashak; Aurora; Midnight Sun; Borealis; West Beach; Polaris; Orion; Tarn; Tabasco; Palm; West Sak; Meltwater; Cascade; Schrader Bluff; Sag River; and Alpine. Exploration and delineation of known satellite fields identified within existing production fields would also be appropriate for coverage under the provisions of this proposed rule.

During the period covered by the proposed regulations, we anticipate a level of activity per year at existing production facilities similar to that during the timeframe of the previous regulations. In addition, during the period of the rule, we anticipate that the levels of new annual exploration and development activities will be similar to those of the previous 3 years.

Biological Information

Pacific Walrus

The Pacific walrus (Odobenus rosmarus) typically inhabits the waters of the Chukchi and Bering seas. Most of the population congregates near the ice edge of the Chukchi Sea pack ice west of Point Barrow during the summer. Walrus migrate north and south following the annual advance and retreat of the pack ice. In the winter, walrus inhabit the pack ice of the Bering Sea, with concentrations occurring in the Gulf of Anadyr, south of St. Lawrence Island, and south of Nunivak Island. The most current conservative, minimum population estimate is approximately 200,000 walrus. Pacific walrus use five major haul out sites on the west coast of Alaska. There are no known haulout sites from Point Barrow to Demarcation Point on the Beaufort Sea coast.

Walrus occur infrequently in the Beaufort Sea, and although individuals are occasionally seen in the Beaufort Sea, they do not occur in significant numbers to the east of Point Barrow. If walrus are observed, they are most likely to be seen in nearshore and offshore areas during the summer, open-water season. They will not be encountered during the ice-covered season.

Walrus sightings in the Beaufort Sea have consisted solely of widely scattered individuals and small groups. For example, while walrus have been encountered and are present in the Beaufort Sea, there were only five sightings of walrus between 146° and 150°W during Minerals Management Service (MMS) sponsored aerial surveys conducted from 1979 to 1995.

Pacific walrus mainly feed on bivalve mollusks obtained from bottom sediments along the shallow continental shelf, typically at depths of 80 m (262 ft) or less. Walrus are also known to feed on a variety of benthic invertebrates, such as, worms, snails, and shrimp, and some slow-moving fish; and some animals feed on seals and seabirds.

Mating usually occurs between January and March. Implantation of a fertilized egg is delayed until June or July. Gestation lasts 11 months (a total of 15 months after mating) and birth occurs between April and June during the annual northward migration. Calves weigh about 63 kg (139 lb) at birth and are usually weaned by age two. Females give birth to one calf every two or more years. This reproductive rate is much lower than other pinnipeds; however, some walrus may live to age 35–40 and remain reproductively active until late in life.

Polar Bear

Polar bears (Ursus maritimus) occur in the circumpolar Arctic and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. Two stocks occur in Alaska: the Chukchi/Bering seas stock, whose minimum size is approximately 2,000, and the Southern Beaufort Sea stock, which was estimated in 2002 to have 2,273 bears.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. Each pregnant female gives birth to one to three cubs, with two cub litters being most common. Cubs are usually born in December. Family groups emerge from their dens in late March or early April. Only pregnant females den for an extended period during the winter; however, other polar bears may burrow in depressions to escape harsh winter winds. The reproductive potential (intrinsic rate of increase) of polar bears is low. The average reproductive interval for a polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these data, a female polar bear may produce about 8–10 cubs in her lifetime.

Ringed seals (Phoca hispida) are the primary prey species of the polar bear, although polar bears occasionally hunt bearded seals (Erignathus barbatus) and walrus calves. Polar bears also scavenge on marine mammal carcasses washed up on shore and have been known to eat anthropogenic nonfood items such as Styrofoam, plastics, car batteries, antifreeze, and lubricating fluids.

Polar bears have no natural predators, and they do not appear to be prone to death by disease or parasites. The most significant source of mortality is humans. Since 1972, with the passage of the Act, only Alaska Natives are allowed to hunt polar bears in Alaska. Bears are used by Alaska Natives for subsistence purposes, such as for consumption and the manufacture of handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number, or season, provided that takes

are non-wasteful. From 1980 through 2002, the total annual harvest in Alaska averaged 107 bears. The majority of this harvest (69 percent) occurred in the Chukchi and Bering Seas area.

Polar bears in the near-shore Alaskan Beaufort Sea are widely distributed in low numbers, with an average density of about one bear per 30 to 50 square miles. Polar bears congregate on barrier islands in the fall and winter because of available food and favorable environmental conditions. Polar bears will occasionally feed on bowhead whale carcasses on barrier islands. In November 1996, biologists from the U.S. Geological Survey observed 28 polar bears near a bowhead whale carcass on Cross Island, and approximately 11 polar bears within a 2-mile radius of another bowhead whale carcass near the village of Kaktovik on Barter Island. From 2000 to 2003, biologists from the USFWS conducted systematic coastal aerial surveys for polar bears from Cape Halkett to Barter Island. During these surveys they observed as many as 5 polar bears at Cross Island and 51 polar bears on Barter Island within a 2-mile radius of bowhead whale carcasses. In a survey during October 2002, we observed 109 polar bears on barrier islands and the coastal mainland from Cape Halkett to Barter Island, a distance of approximately 350 kilometers.

Effects of Oil and Gas Industry Activities on Subsistence Uses of Marine Mammals

The subsistence harvest provides Native Alaskans with food, clothing, and materials that are used to produce arts and crafts. Walrus meat is often consumed, and the ivory is used to manufacture traditional arts and crafts. Polar bears are primarily hunted for their fur, which is used to manufacture cold weather gear; however, their meat is also consumed. Although walrus and polar bears are a part of the annual subsistence harvest of most rural communities on the North Slope of Alaska, these species are not as significant of a food resource as bowhead whales, seals, caribou, and fish.

Pacific Walrus

The Pacific walrus has cultural and subsistence significance to native Alaskans. Although it is not considered a primary food source for residents of the North Slope, walrus are still taken by a few Alaskan communities located in the southern Beaufort Sea along the northern coast of Alaska, including Barrow, Nuiqsut, and Kaktovik.

The primary range of Pacific walrus is west and south of the Beaufort Sea. Accordingly, few walrus inhabit, or are harvested in, the Beaufort Sea along the northern coast of Alaska. Therefore, the effect to Pacific walrus of Industry activities described in this rule making would most likely be minimal, as they would affect only those individuals inhabiting the Beaufort Sea. Walrus constitute only a small portion of the total marine mammal harvest for the village of Barrow. From 1994 to 2002, 182 walrus were reported taken by Barrow hunters through the Service Marking, Tagging, and Reporting Program. Reports indicate that only up to 4 of the 182 animals were taken east of Point Barrow, within the geographic area of these proposed incidental take regulations. Furthermore, hunters from Nuiqsut and Kaktovik do not normally hunt walrus east of Point Barrow and have taken only one walrus in that area in the last 13 years.

Polar Bear

Within the area covered by the proposed regulations, polar bears are taken for subsistence use in Barrow, Nuiqsut, and Kaktovik where Alaska Natives utilize parts of the bears to make traditional handicrafts and clothing. Data from our Marine Mammal Management Office indicate that, from July 1, 1993, to June 30, 2002, a total of 194 polar bears was reported harvested by residents of Barrow; 26 by residents of the village of Nuiqsut; and 26 by residents of the village of Kaktovik. Hunting success varies considerably from year to year because of variable ice and weather conditions.

Native subsistence polar bear hunting could be affected by oil and gas activities in various ways. Hunting areas where polar bears are historically taken may be viewed as tainted if an oil spill were to occur at these sites. In general, though, traditional hunting areas are not located near current or planned Industry activities. Other potential disturbances, such as noise and vehicular traffic, could have limited effects on subsistence activities if these disturbances were to occur near traditional hunting areas and lead to the displacement of polar bears.

Plan of Cooperation

Polar bear and Pacific walrus inhabiting the Beaufort Sea represent a small portion, in terms of the number of animals, of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. Despite this fact, the harvest of these species is important to Alaska Natives. An important aspect of the LOA process therefore, is that prior to receipt of an LOA, Industry must provide evidence to us that an adequate Plan of Cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, the Alaska Nanuuq Commission, and the North Slope Borough. The plan will ensure that oil and gas activities will continue not to have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interfering with subsistence hunting of polar bear and walrus.

Effects of Oil and Gas Industry Activities on Marine Mammals

Pacific Walrus

Walrus are not present in the region of activity during the ice-covered season and occur only in small numbers in the defined area during the open-water season. From 1994 to 2000, three Pacific walrus were sighted during the open-water season. In June 1996, one walrus was observed from a seismic vessel near Point Barrow. In October 1996, one walrus was sighted approximately 5 miles northwest of Howe Island. In September 1997, one walrus was sighted approximately 20 miles north of Pingok Island.

Certain activities associated with oil and gas exploration and production during the open-water season have the potential to disturb walrus. Activities that may affect walrus include disturbance by: (1) Noise, including stationary and mobile sources, and vessel and aircraft traffic; (2) physical obstructions; and (3) contact with releases of oil or waste products. Despite the potential for disturbance, no walrus has been injured during an encounter by industry activities on the North Slope, and there have been no lethal takes to date.

1. Noise Disturbance

Reactions of marine mammals to noise sources, particularly mobile sources, such as marine vessels, vary. Reactions depend on the individual's prior exposure to the disturbance source and their need or desire to be in the particular habitat or area where they are exposed to the noise and visual presence of the disturbance sources. Walrus are typically more sensitive to disturbance when hauled out on land or ice than when they are in the water. In addition, females and young are generally more sensitive to disturbance than adult males.

Noise generated by Industry activities, whether stationary or mobile, has the potential to disturb small numbers of

walrus. The response of walrus to sound sources may be either avoidance or tolerance. In one instance, prior to the initiation of incidental take regulations, walrus that tolerated noises produced by Industry activities were intentionally harassed to protect them from more serious injury. Shell Western E & P Inc. encountered several walrus close to the drillship during offshore drilling operations in the eastern Chukchi Sea in 1989. On more than one occasion, one walrus actually entered the ''moon pool'' of the drillship. Eventually, the walrus had to be removed from the ship for its own safety.

A. Stationary Sources—It is highly improbable that noise from stationary sources would impact many walrus. Currently, Endicott, the saltwater treatment plant, and Northstar, are the only offshore facilities that could produce noise that has the potential to disturb walrus. Although walrus are rare in the vicinity of these facilities, one walrus hauled out on Northstar Island in the fall of 2001.

B. Mobile Sources—Open-water seismic exploration produces underwater sounds, typically with airgun arrays, that may be audible numerous kilometers from the source. Such exploration activities could potentially disturb walrus at varying ranges. In addition, source levels are thought to be high enough to cause hearing damage in pinnipeds that are in close proximity to the sound. It is likely that walrus hearing and sensitivities are similar to pinnipeds at close range, and therefore, it is possible that walrus within the 190 dB re 1 μPa safety radius of seismic activities (industry standard) could suffer temporary threshold shift; however, the use of acoustic safety radii and monitoring programs are designed to ensure that marine mammals are not exposed to potentially harmful noise levels. Previous open-water seismic exploration has been conducted in nearshore ice-free areas. It is highly unlikely that walrus will be present in these areas, and therefore, it is not expected that seismic exploration would disturb many walrus.

C. Vessel Traffic—Noise produced by routine vessel traffic could potentially disturb walrus. However, walrus densities are highest along the edge of the pack ice, and Industry vessel traffic typically avoids these areas. The reaction of walrus to vessel traffic is highly dependent on distance, vessel speed, as well as previous exposure to hunting. Walrus in the water appear to be less readily disturbed by vessels than walrus hauled out on land or ice. In addition, barges and vessels associated with Industry activities will not typically travel near large ice floes or land where walrus could potentially be found. Thus, vessel activities are likely to impact at most a few walrus.

D. Aircraft Traffic—Aircraft overflights may disturb walrus; however, most aircraft traffic is in nearshore areas, where there are typically few to no walrus. Reactions to aircraft vary with range, aircraft type, and flight pattern, as well as walrus age, sex, and group size. Adult females, calves, and immature walrus tend to be more sensitive to aircraft disturbance.

2. Physical Obstructions

Based on known walrus distribution and numbers in the Beaufort Sea near Prudhoe Bay, it is unlikely that walrus movements would be displaced by offshore stationary facilities, such as the Northstar or Endicott, or vessel traffic. There was no indication that the walrus, that used Northstar Island as a haulout in 2001 was displaced from its movements. Vessel traffic could temporarily interrupt the movement of walrus, or displace some animals when vessels pass through an area. This displacement would probably be short-term and would last no more than a few hours at most.

3. Contact With Releases of Oil or Waste Products

The potential releases of oil and waste products associated with oil and gas exploration and production during the open-water season and the associated potential to disturb walrus and polar bears are discussed following the polar bear discussion in this section.

Polar Bear

Oil and gas activities could impact polar bears in various ways during both open-water and ice-covered seasons. These impacts could result from the following: (1) Noise from stationary operations, construction activities, vehicle traffic, vessel traffic, aircraft traffic, and geophysical and geological exploration activities; (2) physical obstruction, such as a causeway or an artificial island; (3) human/animal encounters; and (4) oil spills or contact with hazardous materials or production wastes.

1. Noise Disturbance

Noise produced by Industry activities during the open-water and ice-covered seasons could potentially result in takes of polar bears. During the ice-covered season, denning female bears, as well as mobile, non-denning bears, could be exposed to oil and gas activities and potentially affected in different ways. The best available scientific information indicates that female polar bears entering dens, or females in dens with cubs, are thought to be more sensitive than other age and sex groups to noises.

Noise disturbance can originate from either stationary or mobile sources. Stationary sources include: construction, maintenance, repair, and remediation activities; operations at production facilities; flaring excess gas; and drilling operations from either onshore or offshore facilities. Mobile sources include: vessel and aircraft traffic; open-water seismic exploration; winter vibroseis programs; geotechnical surveys; ice road construction and associated vehicle traffic; drilling; dredging; and ice-breaking vessels.

A. Stationary Sources—All production facilities on the North Slope in the area to be covered by this rulemaking are currently located within the landfast ice zone. Typically, most polar bears ocurr in the active ice zone, far offshore, hunting throughout the year; although some bears also spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times, usually during the fall season when the ice edge is near shore and then quickly retreats northward, bears may remain along the coast or on barrier islands for several weeks until the ice returns. During this time of year, the potential for human/bear encounters can increase. Polar bear interaction plans and employee training serve to reduce the number of encounters and the need for deliberately harassing bears.

During the ice-covered season, noise and vibration from Industry facilities may deter females from denning in the surrounding area, even though polar bears have been known to den in close proximity to industrial activities. In 1991, two maternity dens were located on the south shore of a barrier island within 2.8 km (1.7 mi) of a production facility. Recently, industrial activities were initiated while two polar bears denned close to the activities. During the ice-covered seasons of 2000–2001 and 2001–2002 active, known dens were located within approximately 0.4 km and 0.8 km (0.25 mi and 0.5 mi) of remediation activities on Flaxman Island without any observed impact to the polar bears. Other observations indicate some dens may have been vacated due to exposure to human disturbance.

Noise produced by stationary Industry activities could elicit several different responses in polar bears. The noise may act as a deterrent to bears entering the area, or the noise could potentially attract bears. Attracting bears to these facilities could result in a human/bear

encounter, which could result in unintentional harassment, lethal take, or intentional hazing (under separate permit) of the bear.

Most bears seen near production facilities are transients, and only a small fraction of those observed closely approach the facilities. Currently, there is no evidence that unequivocally states that noise associated with Industry facilities disturbs or does not disturb polar bears. In fact, bears have commonly approached industrial sites in the Canadian Beaufort Sea. In addition, a few bears will approach facilities, particularly on artificial or natural islands, such as Endicott and West Dock in Prudhoe Bay, even though garbage and other attractants are carefully managed.

B. Mobile Sources—In the southern Beaufort Sea, during the open-water season, polar bears spend the majority of their lives on the pack ice, which limits the chances of impacts on polar bears from Industry activities. Although polar bears have been documented in open water, miles from the ice edge or ice floes, this is a relatively rare occurrence. In the open-water season, Industry activities are generally limited to vessel-based exploration activities, such as ocean-bottom cable (OBC) and shallow hazards surveys.

C. Vessel Traffic—Vessel traffic would most likely result in short-term behavioral disturbance only. During the open-water season, most polar bears remain offshore in the pack ice and are not typically present in the area of vessel traffic.

D. Aircraft Traffic—Routine aircraft traffic should have little to no affect on polar bears. However, extensive or repeated overflights of fixed-wing aircraft or helicopters could disturb polar bears throughout the year. Behavioral reactions of non-denning polar bears should be limited to short-term changes in behavior and would have no long-term impact on individuals and no impacts on the polar bear population. Mitigation measures are routinely implemented to reduce the likelihood that bears are disturbed by aircraft. Noise and vibrations produced by extensive aircraft overflights could also disturb denning bears during the ice-covered season, potentially causing them to abandon their dens or depart their dens prematurely.

E. Seismic Exploration—It is unlikely that seismic exploration activities or other geophysical surveys during the open-water season would result in more than temporary behavioral disturbance to polar bears. Polar bears normally swim with their heads above the surface, where underwater noises are weak or undetectable. Although polar bears are typically associated with the pack ice during summer and fall, open-water seismic exploration activities can encounter polar bears in the central Beaufort Sea in late summer or fall.

Noise and vibrations produced by oil and gas exploration and production activities during the ice-covered season could potentially result in impacts on polar bears. During this time of year, denning female bears as well as mobile, non-denning bears could be exposed to and affected differently by potential impacts from oil and gas activities. Disturbances to denning females, either on land or on ice, are of particular concern. As part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance to denning females, we evaluate these routes along with information about known polar bear dens, historic denning sites, and probable denning habitat.

A standard condition of LOAs requires Industry to maintain a 1-mile buffer between survey activities and known denning sites. In addition, we may require Industry to avoid denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we have conducted research, in cooperation with Industry, to enable us to accurately detect active polar bear dens. We have evaluated the use of remote sensing techniques, such as Forward Looking Infrared (FLIR) imagery and the use of scent-trained dogs to locate dens. In addition, Industry has sponsored cooperative research evaluating noise and vibration propagation through substrates and the received levels of noise and vibration in polar bear dens.

Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associated with Industry activities including seismic exploration. The LOA process requires the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take, such as garbage disposal procedures, to minimize impacts to polar bears by reducing the attraction of Industry activities to polar bears. Interaction plans also outline the chain of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site. The result of these polar bear interaction plans and training allows personnel on site to detect bears and respond appropriately. Most often, this response involves deterring the bear from the site. Without such plans and training, the undesirable outcome of lethal takes of bears in defense of human life could occur.

Although very unlikely, it is possible that on-ice vehicle traffic related to seismic exploration could physically run-over an unidentified polar bear den. Known dens around the oilfield are monitored by USFWS and Industry. The oil and gas industry communicates with the USFWS to determine the location of their activities relative to known dens. General LOA provisions require Industry operations to avoid known polar bear dens by 1-mile. There is the possibility that an unknown den may be encountered during Industry activities. If a previously unknown den is identified, communication between Industry and the USFWS and the implementation of mitigation measures help ensure that disturbance is minimized.

2. Physical Obstructions

There is little chance that Industry facilities would act as physical barriers to movements of polar bears. Most facilities are located onshore where polar bears are only occasionally found. The offshore and coastal facilities are most likely to be approached by polar bears. The Endicott Causeway and West Dock facilities have the greatest potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. Yet, because polar bears appear to have little or no fear of man-made structures and can easily climb and cross gravel roads and causeways, bears have frequently been observed crossing existing roads and causeways in the Prudhoe Bay oilfields. Offshore production facilities, such as Northstar, may be approached by polar bears, but due to their layout (*i.e.*, continuous sheet pile walls around the perimeter) the bears may not gain access to the facility itself. This situation may present a small scale, local obstruction to the bears' movement, but also minimizes the likelihood of human/bear encounters.

3. Human/Polar Bear Encounters

Encounters with humans can result in the harassment or (rarely) the death of polar bears. Unlike most mammals, polar bears typically do not fear humans and are extremely curious. Polar bears are most likely to encounter humans during the ice-covered season, when both humans and bears are found on the land-fast ice and adjacent coastline. Polar bears can also come in contact with humans along the coast or on islands, particularly near locations

where subsistence whalers haul bowhead whales on shore to butcher them. Employee training programs are designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. Personnel are instructed to leave an area where bears are seen. If it is not possible to leave, in most cases bears can be displaced by using pyrotechnics or other forms of deterrents.

Contact With Oil or Waste Products by Pacific Walrus and Polar Bears

The discharge of oil into the environment could potentially impact polar bears and walrus depending on the location (*i.e.,* onshore or offshore), size of the spill, environmental conditions, and success of cleanup measures. Spills of crude oil and petroleum products associated with onshore production facilities during ice-covered and open-water seasons are usually minor spills (*i.e.,* 1 to 50 barrels per incident) that are contained and cleaned up immediately. They can occur during normal operations (*e.g.,* transfer of fuel, handling of lubricants and liquid products, and general maintenance of equipment). Fueling crews have personnel that are trained to handle operational spills. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately. Production related spills, generally larger, could occur at any production facility or pipeline connecting wells to the Trans-Alaska Pipeline System (TAPS). These large spills have been modeled to examine potential impacts on marine mammals.

1. Physical Effects of Oil on Pacific Walrus and Polar Bear

Walrus could contact oil in water and on potential haulouts (ice or islands), while polar bears could contact spilled oil in the water, on ice, or on land. In 1980, Canadian scientists performed experiments that studied the effects to polar bears of exposure to oil. More information is available regarding the effects of oil on polar bears than walrus.

Effects on experimentally oiled polar bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, biochemical changes indicative of stress, renal impairment, and death. In experimental oiling, many effects did not become evident until several weeks after exposure to oil.

A. External Oiling— Oiling of the pelt causes significant thermoregulatory problems by reducing the insulation value of the pelt in polar bears. Excessive oiling could cause mortality as well. Polar bears rely on their fur as well as their layer of blubber for thermal insulation. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperatures. Irritation or damage to the skin by oil may further contribute to impaired thermoregulation. Furthermore, an oiled bear would ingest oil because it would groom in order to restore the insulation value of the oiled fur.

In one field observation, biologists documented a bear in Cape Churchill, Manitoba with lubricating oil matted into its fur on parts of its head, neck and shoulders. The bear was re-sighted two months later, at which time he had suffered substantial hair loss in the contaminated areas. Four years later, the bear was recaptured and no skin or hair damage was detectable, which suggests that while oiling can damage the fur and skin, in some instances this damage is only temporary.

Walrus do not rely on fur for thermal insulation, using a layer of blubber for warmth. Hence, they would be less susceptible to similar insulative and pelt impacts of external oiling than bears.

Petroleum hydrocarbons can also be irritating or destructive to eyes and mucous membranes, and repeated exposure could have detrimental consequences to polar bears and walrus. In one experimental study, ringed seals quickly showed signs of eye irritation after being immersed in water covered by crude oil. This progressed to severe inflammation and corneal erosions during the 24-hour experiment. When the animals were returned to uncontaminated water, the eye condition resolved within 3–4 days. This reaction could be expected in other marine mammals, such as polar bears and walrus.

B. Ingestion and Inhalation of Oil— Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects, depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil were ingested or if volatile components of oil were aspirated into the lungs. Indeed, two of three bears died in the Canadian experiment and it was suspected that the ingestion of oil was a contributing factor to the deaths. Experimentally oiled bears ingested much oil through grooming. Much of it was eliminated by vomiting and in the feces, but some was absorbed and later found in body fluids and tissues.

Ingestion of sub-lethal amounts of oil can have various physiological effects on a polar bear, depending on whether the animal is able to excrete and/or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, and thereby affect motility, digestion and absorption. Polar bears may exhibit these types of symptoms if they ingest oil.

Polar bears and walrus swimming in, or bears walking adjacent to, an oil spill could inhale petroleum vapors. Vapor inhalation by polar bears and walrus could result in damage to various systems, such as the respiratory and the central nervous systems, depending on the amount of exposure.

C. Indirect Effects of Oil— Oil may affect food sources of walrus and polar bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could, therefore, temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Also, seals that die as a result of an oil spill could be scavenged by polar bears, thus increasing the bears' exposure to hydrocarbons. Additionally, potentially lethal impacts caused by an oil spill to an area's benthic community could divert walrus from using the area as a food source.

2. Oil Spill and Hazardous Waste Impacts on Pacific Walrus and Polar Bears

A. Pacific Walrus

Onshore oil spills would not impact walrus unless oil moved into the offshore environment. During the open-water season, if a small spill occurs at offshore facilities or by vessel traffic, few walrus would likely encounter the oil. In the event of a larger spill during the open-water season, oil in the water column could drift offshore and possibly encounter a limited number of walrus. During the ice-covered season, spilled oil would be incorporated into the thickening sea ice. During spring melt, the oil would then travel to the surface of the ice, via brine channels, where most could be collected by spill response activities.

Few walrus are found in the Beaufort Sea east of Barrow and low to moderate numbers are found along the pack-ice edge 241 km (150 mi) or more northwest of Prudhoe Bay. Thus, the probability of individual walrus encountering oil, as a

result of an oil spill from Industry activities, is low.

B. Polar Bear

Polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although the majority of the Southern Beaufort Sea polar bear population spends a large amount of its time offshore on the pack ice, it is likely that individual bears will encounter oil from a spill regardless of ocean conditions.

Small spills (1–50 barrels) of oil or hazardous wastes throughout the year by Industry activities could impact small numbers of bears. As stated previously, the effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short term or result in death. In April 1988, a dead polar bear was found on Leavitt Island, approximately 9.3 km (5 n mi) northeast of Oliktok Point. The cause of death was determined to be poisoning by a mixture that included ethylene glycol and Rhodamine B dye; however; the source of the mixture was unknown.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than denning females. Current management practices put in place by Industry attempt to minimize the potential for such incidents by requiring the proper use, storage and disposal of hazardous materials. In the event of an oil spill, it is also likely that polar bears would be deliberately hazed to move them away from the area, further reducing the likelihood of impacting the population.

To date, large oil spills from Industry activities in the Beaufort Sea and coastal regions that have impacted polar bears have not occurred, although the development of offshore production facilities has increased the potential for large offshore oil spills. In a large spill (*i.e.,* 3,600 barrels: the size of a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline), oil would be influenced by seasonal weather and sea conditions. These would include temperature, winds, and for offshore events wave action and currents. Weather and sea conditions would also affect the type of equipment needed for spill response and how effective spill clean-up would be. For example, spill response has been unsuccessful in the clean-up of oil in broken ice conditions. These factors, in turn, would dictate how large spills impact polar bear habitat and numbers.

The major concern regarding large oil spills is the impact a spill would have on the survival and recruitment of the Southern Beaufort Sea polar bear population. Currently, this bear population is approximately 2,200 bears. The most recent population growth rate was estimated at 2.4% annually based on data from 1982 through 1992, although the population is believed to have slowed their growth or stabilized since 1992. In addition, the maximum sustainable harvest is 80 bears for this population (divided between Canada and Alaska). In Alaska, the annual subsistence harvest has fluctuated around 36 bears. The annual subsistence harvest for the Southern Beaufort Sea population (Alaska and Canada combined) has been approximately 62 bears.

The bear population may be able to sustain the additional mortality caused by a large oil spill of a small number of bears, such as 1–5 individuals. The additive effect, however, of numerous bear deaths (*i.e.* in the range of 20–30) caused by an oil spill coupled with the subsistence harvest and other potential impacts, both natural and human-induced, may reduce recruitment and survival. The removal rate of bears from the population would then increase higher than what could be sustained by the population, potentially causing a decline in the bear population and affecting bear productivity and subsistence use.

Actual Impacts of Industry Activities on Pacific Walrus and Polar Bears

The actual impact to Pacific walrus in the central Beaufort Sea from oil and gas activities has been minimal. Between 1994 to 2000, only three Pacific walrus were encountered in the Beaufort Sea. All were sighted during open-water seismic programs.

Actual impacts on polar bears by the oil and gas industry during the past 30 years have been minimal as well. Polar bears have been encountered at or near most coastal and offshore production facilities, or along the roads and causeways that link these facilities to the mainland. During this time, only 2 polar bear deaths related to oil and gas activities have occurred. In winter 1968–1969, an industry employee on the Alaskan North Slope shot and killed a polar bear. In 1990 a female polar bear was killed at a drill site on the west side of Camden Bay. In contrast, 33 polar bears were killed in the Canadian Northwest Territories between 1976 to 1986 due to encounters with industry. Since the beginning of the incidental take program, no polar bears have been killed due to encounters associated with current Industry activities in the Prudhoe Bay area (Alpine to Badami).

The majority of actual impacts on polar bears have resulted from direct human/bear encounters. Monitoring efforts by Industry required under previous regulations for the incidental take of polar bears and walrus have documented various types of interaction between polar bears and Industry. During a 7-year period (1994–2000), while incidental take regulations were in place, Industry reported 258 polar bear sightings. During this period, polar bears were sighted during 32 of the 115 activities covered by incidental take regulations. Approximately two-thirds of the sightings (171 of 258 sightings) occurred during production activities, which suggests that Industry activities that occur on or near the Beaufort Sea coast have a greater possibility for encountering polar bears than other Industry activities. Sixty-one percent of polar bear sightings (157 of 258 sightings) consisted of observations of polar bears traveling through or resting near the monitored areas without a perceived reaction to human presence, while 101 polar bear sightings involved bear-human interactions.

Twenty-one percent of all bear-human interactions (21 of 101 sightings) involved anthropogenic attractants, such as garbage dumpsters and landfills, where these attractants altered the bear's behavior. Sixty-five percent of polar bear-human interactions (66 of 101 sightings) involved Level B harassment to maintain human and bear safety by preventing bears from approaching facilities and people. We have no indication that encounters that alter the behavior and movement of individual bears have any long-term effects on those bears, related to recruitment or survival. We, therefore, believe that the small number of encounters anticipated to occur between polar bears and Industry are unlikely to have any significant effect on the polar bear population.

We conclude that it is unlikely that large numbers of polar bears will be taken by Industry in the future based on the proceeding information. Based on this discussion, any take reasonably likely to or reasonably expected to be caused by routine oil and gas activities will not result in more than a negligible impact on this species.

Risk Assessment Analysis

For marine mammals oil spills are of most concern when they occur in the marine environment, where spilled oil can accumulate at the water surface, ice edge, in leads, and similar areas of importance to marine mammals. Thus, offshore production activities, such as Northstar, have the potential to cause

negative impacts on marine mammals because as additional offshore oil exploration and production occurs, the potential for large spills increases. Northstar transports crude oil from a gravel island in the Beaufort Sea to shore via a 5.96-mile buried sub-sea pipeline. The pipeline is buried in a trench in the sea floor deep enough to reduce the risk of damage from ice gouging and strudel scour. Production of Northstar began in 2001, and currently 70,000 barrels of oil pass through the pipeline daily.

Due to the concern of a potential offshore oil spill, a risk assessment was performed to investigate the probability of mortality in polar bears due to an oil spill and the likelihood of occurrence in various ice conditions. Pacific walrus were not included in the risk assessment due to a lack of data regarding walrus abundance and distribution in the Beaufort Sea because of small numbers present seasonally in the Beaufort Sea.

The quantitative rationale for a negligible impact determination was based on a risk assessment that considered oil spill probability estimates for the Northstar Project, an oil spill trajectory model, and a polar bear distribution model. The Northstar FEIS provided estimates of the probability that one or more spills greater than 1,000 barrels of oil will occur over the project's life of 15 years. We considered only spill probabilities for the drilling platform and sub-sea pipeline, as these are the spill locations that would affect polar bears.

Methodology

Initially, Applied Sciences Associates, Inc., was contracted by BP Exploration Alaska Inc. to run the OILMAP oil spill trajectory model. The size of the modeled spills was set at 3,600 barrels, simulating rupture and drainage of the entire sub-sea pipeline. Each spill was modeled by tracking the location of 100 ''spillets,'' each representing 36 barrels. In the model, spillets were driven by wind, and their movements were stopped by the presence of sea ice. Open water and broken ice scenarios were each modeled with 250 simulations. A solid ice scenario was also modeled, in which oil was trapped beneath the ice and did not spread. In this event, we found it unlikely that polar bears will contact oil, and therefore removed this scenario from further analysis. Each simulation was run to cover a period of 4 days, with no cleanup or containment efforts simulated. At the end of each simulation, the size and location of each spill was represented in a geographic information system (GIS).

The trajectory model was dependent on numerous assumptions, some of which underestimate, while others overestimate, the potential risk to polar bears. These assumptions relate to, and include: variation in spill probabilities during the year; the length of time that oil was in the environment and was subject to the spill trajectory model; whether or not containment occurred in various runs of the trajectory model; types of efforts and effects of efforts to deter wildlife during spills; contact by bears with a modeled spillet resulting in mortality; and the presence and size of bear groups. We assumed that the annual probability of a spill was equal during any season of the year. Any differences in seasonal spill probabilities would have a corresponding increase or decrease in risk. The model assumed oil would remain in the environment for 4 days; increasing that period of time would increase the risk to polar bears, while decreasing the period would decrease the risk. We assumed that containment of oil in broken-ice conditions would not be effective; however, any successful containment of oil under other water conditions would correspondingly reduce the risk of oiling to wildlife. We assumed that deterrent hazing of wildlife did not take place. If instituted, hazing could reduce the likelihood of polar bears encountering oil. We assumed that polar bear distribution was not affected by sights, smells, or sounds associated with a spill and that polar bears were neither attracted to nor displaced by these factors.

Similarly, the risk assessment model accounted for average movements and likelihood of polar bears being present in any given location based on a history of movements from satellite-collared females. The model did not consider aggregations of polar bears that may be present seasonally in the study area, nor did it consider whether other sex and age classes of polar bears have movements similar to adult females. If aggregations were to occur, then the risk to polar bears could increase. If the distribution of other sex/age classes differs from adult females, then risk may correspondingly increase or decrease for these sex/age classes.

Lastly, we assumed that polar bears located within the distribution grid that intersected with oil spillets modeled in the trajectory model were oiled and that mortality occurred, although this may not occur naturally. In evaluating the impacts of all these assumptions, we determined that the assumptions that overestimate and underestimate mortalities were generally in balance.

Impacts to polar bears from the oil spill trajectory model were derived using telemetry data from the U.S. Geological Survey, Biological Resources Division (USGS). Telemetry data suggest that polar bears are widely distributed in low numbers across the Beaufort Sea with a density of about one bear per 30–50 square miles. Movement and distribution information was derived from radio and satellite relocations of collared adult females. The USGS developed a polar bear distribution model based on an extensive telemetry data set of over 10,000 relocations. Using a technique called ''kernel smoothing,'' they created a grid system centered over Northstar and estimated the number of bears expected to occur within each 0.25-km^2 grid cell. Each of the simulated oil spills was overlaid with the polar bear distribution grid. In the simulation, if a spillet passed through a grid cell, the bears in that cell were considered killed by the spill. In the open water scenario, the estimated number of bears killed ranged from less than 1 to 78 bears, with a median of 8 bears. In the broken ice scenario, results ranged from less than 1 to 108, with a median of 21. These results are based on an ''average'' distribution of polar bears and do not include potential aggregation of bears, such as on Cross Island in the fall.

The Service then analyzed the spill trajectory and polar bear distribution to estimate the probability of an oil spill during the proposed 16-month regulation period and the likelihood of occurrence of oil spills causing mortality for various numbers of bears. Assuming this probability was uniform throughout the year, the probability during any particular set of ice conditions was proportional to the length of those conditions. The probability of polar bear mortality in the event of an oil spill was calculated from mortality levels in excess of 5, 10, and 20 bears. Likelihood of occurrence is the product of the probabilities of spill and mortality. Hence, the overall likelihood is the sum of likelihoods over all ice conditions.

Results

The results of the analysis suggested that there is a 0.72% probability of an oil spill occurring during the period of the proposed rule. Furthermore, there was a 0.13–0.21 percent chance of a spill occurring that results in greater than five polar bears killed. As the threshold number of bears is increased, the likelihood of that event decreases; the likelihood of taking more bears becomes less. Thus, the probability of a spill that will cause a mortality of 10 or

more bears was 0.11–0.14 percent; and for 20 or more bears, it is 0.06–0.08 percent.

In addition, using exposure variables and production estimates from the Northstar EIS, we estimated that the likelihood of one or more spills greater than 1,000 barrels in size occurring in the marine environment is 1–5 percent during the period covered by the proposed regulations.

Discussion

The greatest source of uncertainty in our calculations was the probability of an oil spill occurring. The oil spill probability estimates for the Northstar Project were calculated using data for sub-sea pipelines outside of Alaska and outside of the Arctic. These spill probability estimates, therefore, do not reflect conditions that are routinely encountered in the Arctic, such as permafrost, ice gouging, and strudel scour. They may include other conditions unlikely to be encountered in the Arctic, such as damage from anchors and trawl nets. Consequently, we have some uncertainty about oil spill probabilities as presented in the Northstar FEIS. If the probability of a spill were actually twice the estimated value, however, the probability of a spill that will cause a mortality of one or more bears is still low (about 6 percent).

In addition to the results from the risk analysis, anecdotal information supported our determination that any take associated with Northstar will have a negligible impact on the Beaufort Sea polar bear population. This information was based on observations of polar bear aggregations on barrier islands and coastal areas in the Beaufort Sea, which may occur for brief periods in the fall, usually 4 to 6 weeks. The presence and duration of these aggregations are influenced by the presence of sea ice near shore and the availability of marine mammal carcasses, notably bowhead whales from subsistence hunts. In order for any take associated with a Northstar oil spill to have more than a negligible impact on polar bears, an oil spill would have to occur, an aggregation of bears would have to be present, and the spill would have to contact the aggregation. We believe the probability of all these events occurring simultaneously is low.

We concluded that if an offshore oil spill were to occur during the fall or spring broken-ice periods, a significant impact to polar bears could occur. However, in balancing the level of impact with the probability of occurrence, we concluded that the probability of large-volume spills that would cause significant polar bear takes is low. Additionally, because of the small volume of oil associated with onshore spills, the rapid response system in place to clean up spills, and the protocol available to deter bears away from the affected area for their safety, we concluded that onshore spills would have little impact on the polar bear population. Therefore, the total expected taking of polar bear during Industry activities will have no more than a negligible impact on this species.

In making this proposed finding, we are following Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information. 53 FR at 8474; accord, 132 Cong. Rec. S 16305 (Oct. 15, 1986).

Summary of Take Estimate for Pacific Walrus and Polar Bear

Pacific Walrus

Since walrus are typically not found in the region of Industry activity, the probability is small that Industry activities, such as offshore drilling operations, seismic, and coastal activities, will affect walrus. Walrus observed in the region have typically been lone individuals, further reducing the number of potential takes expected. Only 3 walrus were observed by Industry during its activities between 1994 to 2000. In addition, the majority of walrus hunted by Barrow residents were harvested west of Point Barrow, outside of the area covered by incidental take regulations, while Kaktovik harvested only one walrus. Given this information, no more than a small number of walrus will be taken during the length of this rule. These takes would be unintentional and most likely non-lethal.

Polar Bear

Industry activities, from exploration, development and production operations could potentially disturb polar bears. These disturbances are expected to be primarily short-term behavioral reactions resulting in displacement, and should have no more than a negligible impact on the population. Noise and vibration are theorized to have the following effects on polar bears. Polar bears could be displaced from the immediate area of activity due to noise and vibrations. They could be attracted to sources of noise and vibrations out of curiosity, which could result in human/bear encounters. Denning females with cubs could prematurely abandon their dens due to noise and vibrations produced by certain industrial activities at close distances. Also, noise and vibration from stationary sources could keep females from denning in the vicinity of the source.

Contact with, or ingestion of oil could also potentially affect polar bears. Small oil spills are cleaned up immediately and should have little opportunity to affect polar bears. The probability of a large spill occurring is very small. If such a spill were to occur at an offshore oil facility, however, polar bears could come into contact with oil. The impact of a large spill would depend on the location and size of the spill, environmental factors, and the success of clean-up measures.

The Service estimates that only a small number of polar bear takes will occur during the length of the proposed regulations. These takes would be unintentional and non-lethal. However, it is possible that a few unintentional lethal takes could occur under low probability circumstances. For example, a scenario of an unintentional lethal take could be a road accident where a vehicle strikes and kills a polar bear.

Conclusions

Based on the previous discussion, we make the following findings regarding this action.

Impact on Species

The Beaufort Sea polar bear population is widely distributed throughout their range. Polar bears typically occur in low numbers in coastal and nearshore areas where most Industry activities occur. Hence, impacts that might be significant for individuals or small groups of animals are expected to be no more than negligible for the polar bear population as a whole. Likewise, the Pacific walrus is only occasionally found during the open-water season in the Beaufort Sea. Industry impacts would be no more than negligible for the walrus population as well.

We reviewed the effects of the oil and gas industry activities on marine

mammals, which included impacts from stationary and mobile sources, such as noise, physical obstructions, and oil spills. Based on past LOA monitoring reports, we believe that takes resulting from the interactions between Industry and Pacific walrus and polar bears has had a negligible impact on these species. Additional information, such as recorded subsistence harvest levels and incidental observations of polar bears near shore, suggests that these populations have not been adversely affected. The projected level of activities during the period covered by the proposed regulations (existing development and production activities, as well as proposed exploratory activities) are similar in scale to previous levels. In addition, current mitigation measures will be kept in place. Therefore, based on past LOA monitoring reports, we conclude that any take reasonably likely to or reasonably expected to occur as a result of projected activities will have a negligible impact on polar bear and Pacific walrus populations.

The Northstar development is currently the only offshore development in production with a subsea pipeline. Concerns about potential oil spills in the marine environment as a result of this development were raised in the Northstar FEIS. We have analyzed the likelihood of an oil spill in the marine environment of the magnitude necessary to kill a significant number of polar bears, and found it to be minimal. Thus, after considering the cumulative effects of existing development and production activities, and proposed exploratory activities, both onshore and offshore, we find that the total expected takings resulting from oil and gas industry exploration, development, and production activities will have a negligible impact on polar bear and Pacific walrus populations, and will have no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives during the proposed duration of this rule.

We find, based on the recent scientific information available on polar bear and walrus, the results of monitoring data from our previous regulations, and the results of our oil spill modeling assessments, that any take reasonably likely to result from the effects of oil and gas related exploration, development, and production activities through the duration of these regulations, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bear and Pacific walrus populations.

Even though the probability of an oil spill that will cause significant impacts to the walrus and polar bear population is extremely low, in the event of a catastrophic spill, we will reassess the impacts to polar bear and walrus and reconsider the appropriateness of authorizations for incidental taking through section 101(a)(5)(A) of the Act.

Our proposed finding of ''negligible impact'' applies to oil and gas exploration, development, and production activities. As with our past incidental take regulations for these actions, generic conditions would be attached to each LOA. These conditions minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. We may add additional measures depending upon site-specific and species-specific concerns. Generic conditions include the following: (1) These regulations do not authorize intentional taking of polar bear or Pacific walrus. (2) For the protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities may be restricted in specific locations during specified times of the year. These restrictions will be applied on a case-by-case basis after assessing each LOA request. In potential denning areas, we may require pre-activity surveys (*e.g.*, aerial surveys) to determine the presence or absence of denning activity; in known denning areas we may require enhanced monitoring during activities. (3) Each activity covered by an LOA requires a site-specific plan of operation and a site-specific polar bear interaction plan. The purpose of the required plans is to ensure that the level of activity and possible takes will be consistent with our proposed finding that the cumulative total of incidental takes will have a negligible impact on polar bear and Pacific walrus, and where relevant, will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

Impact on Subsistence Take

We find, based on the best scientific information available, including the results of monitoring data, that any take reasonably likely to result from the effects of of Industry activities during the period of the rule in the Beaufort Sea and adjacent northern coast of Alaska, will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses.

Polar bears are hunted primarily during the ice-covered season, and the proposed activities are expected to have a negligible impact on the distribution, movement, and numbers of polar bears found during this time period in the regulation area. Walrus are primarily hunted during the open-water season, and the proposed oil and gas activities are also expected to have a negligible impact on the distribution, movement, and numbers of walrus in the region. Regular communication between the industry and native communities will further reduce the likelihood of interference with subsistence harvest.

If there is evidence during the period of the rule that oil and gas activities may affect the availability of polar bear or walrus for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of an LOA. Monitoring plans are required to determine effects of oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Monitoring plans must identify the methods used to assess changes in the movements, behavior, and habitat use of polar bear and walrus in response to Industry activities. Monitoring activities are summarized and reported in a formal report each year. The applicant must submit a monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity. We base each year's monitoring objective on the previous year's monitoring results. For exploration activities the applicant must submit a final monitoring report to us no later than 90 days after the completion of the activity. Since development and production activities are continuous and long-term, we will issue LOAs, which include monitoring and reporting plans for the life of the activity or until the expiration of the regulations, whichever occurs first. Prior to January 15 of each year, we will require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued coverage under the LOA.

Required Determinations

NEPA Considerations

We have prepared a draft Environmental Assessment (EA) in conjunction with this proposed rulemaking. Subsequent to closure of the comment period for this proposed rule, we will decide whether this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969. For a copy of the draft Environmental Assessment, contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

Regulatory Planning and Review

This document has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review). This rule will not have an effect of $100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. The proposed rule is not likely to result in an annual effect on the economy of $100 million or more. Expenses will be related to, but not necessarily limited to, the development of applications for regulations and LOAs, monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 2002) and LOA requests probably does not exceed $500,000 per year, short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

Small Business Regulatory Enforcement Fairness Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section, **FOR FURTHER INFORMATION CONTACT.**

Public Comments Solicited

We are opening the comment period on this proposed rule for only 30 days because the previous regulations authorizing the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska expired March 31, 2003.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 18.123, ''When is this rule effective?''

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state that prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Takings Implications

This proposed rule is not expected to have a potential taking implications under Executive Order 12630 because it would authorize the incidental, but not intentional, take of small numbers of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs.

Federalism Effects

This proposed rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a

''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

This regulation requires information collection under the Paperwork Reduction Act. General regulations in 50 CFR 18.27 (that implement the provisions of section 101(a)(5)(A) of the Act) contain information collection, record keeping, and reporting requirements associated with development and issuance of specific regulations and LOAs that are subject to Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The request for regulations includes information collection and record keeping requirements; therefore, under the requirements of the Paperwork Reduction Act the process of receiving authorization from the OMB is underway.

Energy Effects

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule would provide exceptions from the taking prohibitions of the MMPA for entities engaged in the exploration, development, and production of oil and gas in the Beaufort Sea and adjacent coastal areas of northern Alaska. By providing certainty regarding compliance with the MMPA, this rule will have a positive effect on Industry and its activities. Although the rule would require Industry to take a number of actions, these actions have been undertaken by Industry for many years in the past as part of similar regulations. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, the Service proposes to amend Part 18, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

1. The authority citation of 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Revise part 18 by adding a new subpart J to read as follows:

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 What specified activities does this rule cover?
18.122 In what specified geographic region does this rule apply?
18.123 When is this rule effective?
18.124 How do I obtain a Letter of Authorization?
18.125 What criteria does the Service use to evaluate Letter of Authorization requests?
18.126 What does a Letter of Authorization allow?
18.127 What activities are prohibited?
18.128 What are the monitoring and reporting requirements?
18.129 What are the information collection requirements?

§ 18.121 What specified activities does this rule cover?

Regulations in this subpart apply to the incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska.

§ 18.122 In what specified geographic region does this rule apply?

This rule applies to the geographic region defined by a north/south line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is not included in the area covered by this rule. The following map shows the area where this rule applies.

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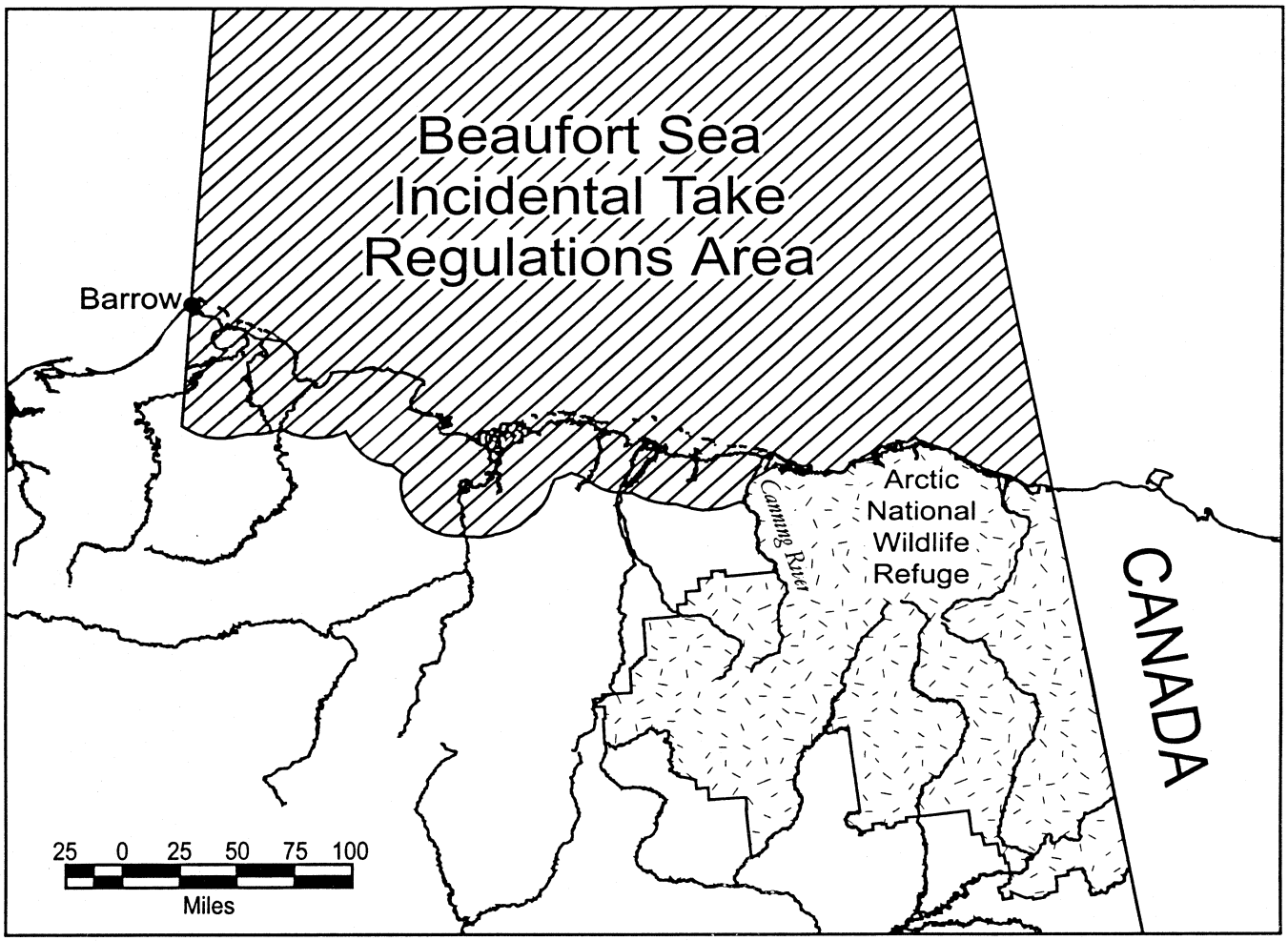

Figure 1. Specific geographic area covered by the Beaufort Sea incidental take regulations.

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§ 18.123 When is this rule effective?

Regulations in this subpart are effective for 16 months from date of issuance, for year-round oil and gas exploration, development, and production activities.

§ 18.124 How do I obtain a Letter of Authorization?

(a) You must be a U.S. citizen as defined in § 18.27(c) of this part.

(b) If you are conducting an oil and gas exploration, development, or production activity that may cause the taking of polar bear or Pacific walrus in the geographic region described in § 18.122 and you want incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for activities in each development and production area. You must submit the application for authorization to our Alaska Regional Director (*see* 50 CFR 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area affected by that activity.

(2) A site-specific plan to monitor the effects of the activity on the behavior of polar bear and Pacific walrus that may be present during the ongoing activity. Your monitoring program must document the effects on these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A site specific polar bear awareness and interaction plan. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(4) A Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting. This Plan of Cooperation must identify measures to minimize adverse effects on the availability of polar bear and Pacific walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. You must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations. You must make reasonable efforts to ensure that activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or Pacific walrus are properly mitigated.

§ 18.125 What criteria does the Service use to evaluate Letter of Authorization requests?

(a) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that considered by us in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for take for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may grant the authorization as is, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5) of this part, we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stock of polar bear or Pacific walrus.

§ 18.126 What does a Letter of Authorization allow?

(a) Your Letter of Authorization may allow the incidental, but not intentional, take of polar bear and Pacific walrus when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities;

(4) Drilling production wells and performing production support operations;

(5) Conducting environmental monitoring programs associated with exploration, development, and production activities to determine specific impacts of each activity.

(b) You must use methods and conduct activities identified in your Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and Pacific walrus, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) Each Letter of Authorization will identify conditions or methods that are specific to the activity and location.

§ 18.127 What activities are prohibited?

(a) Intentional take of polar bear or Pacific walrus.

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of your Letter of Authorization.

§ 18.128 What are the monitoring and reporting requirements?

(a) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and Pacific walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bear and Pacific walrus.

(c) We may place an observer on the site of the activity or on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of your activity on polar bear and Pacific walrus.

(d) For exploratory activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

(1) Dates and times of activity;

(2) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities including an estimated level of take.

§ 18.129 What are the information collection requirements?

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. We need to collect the information in order to describe the proposed activity and estimate the impacts of potential takings by all persons conducting the activity. We will use the information to evaluate the application and determine whether to issue specific Letters of Authorization.

(b) For the duration of this rule, when you conduct operations under this rule, we estimate an 8-hour burden per Letter of Authorization, a 4-hour burden for monitoring, and an 8-hour burden per monitoring report. You must respond to this information collection request to

obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act. You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, D.C. 20503.

Dated: July 15, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–18907 Filed 7–24–03; 8:45 am]

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Notices

Federal Register

Vol. 68, No. 143

Friday, July 25, 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.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Informational Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of informational meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold two informational meetings at the dates and locations noted below. The meetings will assist the Access Board in developing accessibility guidelines under the Americans with Disabilities Act for passenger vessels. Specifically, the meetings will focus on the issue of providing accessible embarkation and disembarkation for persons with disabilities on and off passenger vessels which are subject to 46 CFR subchapters H or K, and foreign flag vessels of a comparable size and passenger capacity.

DATES: The Access Board will hold the first meeting on August 20, 2003, from 1:30 p.m. to 5:30 p.m. A second meeting will be held on September 9, 2003, from 1: p.m to 5:30 p.m.

ADDRESSES: The meeting on August 20 will be held at the Hilton New Orleans Riverside, Two Poydras Street, New Orleans, LA. The second meeting, on September 9 will be held at the Seattle Marriott Waterfront, 2100 Alaskan Way, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. Electronic mail address: *pvag@access-board.gov.* This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (*http://www.access-board.gov/pvagmtg.htm*).

SUPPLEMENTARY INFORMATION: In 1998, the Access Board established an advisory committee to make recommendations on accessibility guidelines for passenger vessels. Membership included disability groups, industry organizations, State and local government agencies, and passenger vessel operators. The Passenger Vessel Access Advisory Committee held nine meetings from September 1988 to September 2000 and submitted a final report to the Board entitled ''Recommendations for Accessibility Guidelines for Passenger Vessels'' in December 2000. The Board has made this report widely available as a source of guidance until final guidelines are developed. The report is available on the Access Board's Web site at *http://www.access-board/gov/pvaac/commrept/index.htm.* Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1, and requesting publication A–42 (Recommendations for Accessibility Guidelines for Passenger Vessels). Persons using a TTY should call (202) 272–0082. Please record a name, address, telephone number and request publication A–42. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk).

Although the advisory committee provided recommendations on a number of issues, specific recommendations regarding running slopes for gangways were not provided. (See Chapter 2 of the Recommendations for Accessibility Guidelines for Passenger Vessels report.) Because passenger vessels come in different shapes and sizes and the marine environment in which the piers are located are influenced by many factors which add to the complexities of providing access, additional information is needed on this topic before specific criteria for gangway running slopes can be proposed for public comment.

The meetings will principally focus on the issue of gangway running slopes. As gangways are the primary method used in providing a pedestrian connection between piers and passenger vessels, the running slope of such gangways is an important access issue for persons with disabilities. In addition to gangways, the meeting will also focus on other methods used to provide access on and off passenger vessels. Issues not related to providing access on and off passenger vessels are not the subject of these meetings.

To maximize the time available, the meeting will only focus on passenger vessels which are subject to 46 CFR subchapters H or K (and foreign flag vessel of a comparable size and passenger capacity). These passenger vessels are typically larger vessels, as compared to those subject to subchapters C or T.

Interested members of the public are encouraged to contact Paul Beatty at the Access Board at (202) 272–0012 (Voice), (202) 272–0082 (TTY) or *pvag@access-board.gov* to pre-register to attend the informational meetings. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending the informational meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 03–18997 Filed 7–24–03; 8:45 am]

BILLING CODE 8150–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 24, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800,

1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 6, 2002, May 9, and May 16, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 72640, 68 FR 24919, and 26566/26567) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

(End of Certification)

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Fluid Element Filter, 2940–00–832–6054.
NPA: Gaston Skills, Inc., Gastonia, North Carolina.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Supply Cup, 7510–00–161–6211.
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Custodial Services, Franklin D. Roosevelt Library, Hyde Park, New York.
NPA: Gateway Community Industries, Inc., Kingston, New York.
Contract Activity: National Archives & Records Administration, College Park, Maryland.
Service Type/Location: Custodial Services, U.S. Border Station, Old Champlain Farm, Champlain, New York.
NPA: Clinton County Chapter, NYSARC, Inc., Plattsburgh, New York.
Contract Activity: GSA/PBS Upstate New York Service Center, Syracuse, New York.
Service Type/Location: Janitorial/Custodial, FAA, ATCT & FSDO, Gerald Ford International Airport, Grand Rapids, Michigan.
NPA: Hope Network Services Corporation, Grand Rapids, Michigan.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center Garden Grove, Garden Grove, California.
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, California.
Contract Activity: 63rd Regional Support Command, Los Alamitos, California.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Eau Claire, Wisconsin.
NPA: L.E. Phillips Career Development Center, Inc., Eau Claire, Wisconsin.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Fairmont, West Virginia, U.S. Army Reserve Center, Grafton, West Virginia, U.S. Army Reserve Center, New Martinsville, West Virginia.
NPA: PACE Training and Evaluation Center, Inc., Star City, West Virginia.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Walker, Michigan.
NPA: Hope Network Services Corporation, Grand Rapids, Michigan.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–18980 Filed 7–24–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 24, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which

they are providing additional information.

(End of Certification)

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Lock-Jaw-Wood Mop Handle, 7920–01–452–2028.
NPA: New York City Industries for the Blind, Inc., Brooklyn, New York.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Base Supply Center, Fort Sill, Oklahoma.
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas.
Contract Activity: U.S. Army Field Artillery Center & Fort Sill, Oklahoma.
Service Type/Location: Janitorial/Custodial, Bureau of Land Management, Salt Lake Field Office and Warehouse, Salt Lake City, Utah.
NPA: Community Foundation for the Disabled, Inc., Salt Lake City, Utah.
Contract Activity: Bureau of Land Management—Utah State Office, Salt Lake City, Utah.
Service Type/Location: Janitorial/Custodial, Federal Aviation Administration, Belleville SFO, Scott AFB, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Janitorial/Grounds Maintenance, Veterans Affairs Regional Office, Montgomery, Alabama.
NPA: Lakeview Center, Inc., Pensacola, Florida.
Contract Activity: Veterans Affairs Regional Office, Montgomery, Alabama.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–18981 Filed 7–24–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030715174–3174–01]

Revisions to the Unverified List—Guidance as to ''Red Flags''

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security (''BIS'') published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks (''PLC'') or post-shipment verifications (''PSV'') could not be conducted for reasons outside the control of the U.S. Government (''Unverified List''). This notice advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a ''red flag'' as described in the guidance set forth in Supplement No. 3 to 15 CFR Part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notice also stated that, when warranted, BIS would remove persons from the Unverified List. Recently a PSV was completed at the facilities of Daqing Production Logging Institute, No. 3 Fengshou Village, Sartu District, Daqing City, Heilongjiang, People's Republic of China. Accordingly, by this notice, Daqing Production Logging Institute is removed from the Unverified List.

DATES: This notice is effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security; Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR Parts 730 to 774) (''EAR''), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, selectively conduct PLCs to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out PSVs to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other federal officials acting on BIS's behalf, have been unable to perform a PLC or PSV with respect to certain export transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). In a notice issued on June 14, 2002 (67 FR 40910), BIS set forth an Unverified List of certain foreign end-users and consignees involved in such transactions.

The June 14, 2002 notice also advised exporters that participation of a person on the Unverified List in a proposed transaction will be considered by BIS to raise a ''red flag'' under the ''Know Your Customer'' guidance set forth in Supplement No. 3 to 15 CFR Part 732 of the EAR. Under that guidance, whenever there is a ''red flag,'' exporters have an affirmative duty to inquire, verify, or otherwise substantiate that proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR Part 744, and does not violate other requirements set forth in the EAR.

The **Federal Register** notice further stated that BIS may periodically add persons to the Unverified List based on the criteria set forth above, and remove names of persons from the list when warranted.

BIS has not conducted a PSV in a transaction involving Daqing Production Logging Institute, No. 3 Fengshou Village, Sartu District, Daqing City, Heilongjiang, People's Republic of China, a person included on the Unverified List. This notice advises exporters that Daqing Production Logging Institute is removed from the Unverified List, and the ''red flag'' resulting from Daqing Production Logging Institute's inclusion on the Unverified List is rescinded.

The Unverified List, as modified by this notice, is set forth below.

Lisa A. Prager,

Acting Assistant Secretary for Export Enforcement.

Unverified List (as of July 25, 2003)

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check (''PLC'') or a post-shipment verification (''PSV'') for reasons outside of the U.S. Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a ''red flag'' with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR Part 732. The ''red flag'' applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known addrress
Lucktrade International	Hong Kong Special Administrative Region	P.O. Box 91150, Tsim Sha Tsui, Hong Kong.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN.BHD	.....do	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Shaanxi Telecom Measuring Station	People's Republic of China	39 Jixiang Road, Yanta District Xian, Shaanxi.
Yunma Aircraft Mfg.	.....do	Yaopu Anshun, Guizhou.
Civil Airport Construction Corporation	.....do	111 Bei Sihuan Str. East, Chao Yang District, Beijing.
Power Test & Research Institute of Guangzhou	.....do	No. 38 East Huangshi, Road, Guangzhou.
Beijing San Zhong Electronic Equipment Engineer Co., Ltd.	.....do	Hai Dian Fu Yuau, Men Hao 1 Hao, Beijing.
Huabei Petroleum Administraion Bureau Logging Company.	.....do	South Yanshan Road, Ren Qiu City, Hebei.
Peluang Teguh	Singapore	203 Henderson Road #09–05H, Henderson Industrial Park, Singapore.
Lucktrade International PTE Ltd	.....do	35 Tannery Road, #01–07 Tannery Block, Ruby Industrial Complex, Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.

[FR Doc. 03–19017 Filed 7–24–03; 8:45 am]
BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–888]

Notice of Initiation of Antidumping Investigation: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Investigation

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Sam Zengotitabengoa, AD/CVD Enforcement Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0651 or (202) 482–4195, respectively.

INITIATION OF INVESTIGATION:

The Petition

On June 30, 2003, the Department of Commerce (the Department) received a *Petition for the Imposition of Antidumping Duties on Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China* (*the petition*), filed in proper form, by Home Products International, Inc. (the petitioner). The Department received information supplementing the petition on July 2, 2003, and July 8, 2003.

In accordance with section 732(b) of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act, the petitioner alleges that imports of floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition* section below.

Period of Investigation

The anticipated period of investigation (POI) for this investigation is October 1, 2002, through March 31, 2003.

Scope of Investigation

For purposes of this investigation, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this investigation.

Furthermore, this investigation specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this investigation, the term ''unassembled'' ironing table means product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term ''complete'' ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The term ''incomplete'' ironing table means product shipped or sold as a ''bare board'' *i.e.*, a metal-top table only, without the pad and cover- with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this investigation under the term ''certain parts thereof'' consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The investigation covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for the purposes of U.S. Bureau of Customs and Border Protection (Customs), the Department's written description of the scope remains dispositive.

During our review of the petition, we discussed the scope with the petitioner and the commodity specialist at the United States Bureau of Customs and Border Protection to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and, (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using any statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. *See* sections 771(4)(A)(i) and (ii) of the Act. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. *See* section 771(10) of the Act. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation.

Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, which is defined in the ''Scope of Investigation'' section of the notice. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition. *See Import Administration Antidumping Investigation Checklist*, dated July 18, 2003, (*Initiation Checklist*), at page 2 (public version on file in the CRU of the Department, Room B-099).

The Department has further determined that this petition contains adequate evidence of industry support. As HPI is the only producer of floor-standing metal-top ironing tables in the United States, there is no production data for any other domestic producers of floor-standing metal-top ironing tables. The petitioner provided actual production volume for January through December 2002. We conducted a search of the information reasonably available on the Internet and could find no information that contradicted the petitioner's assertion. Information contained in the petition demonstrates that the domestic producer or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. *See Initiation Checklist*, at pages 3 and 4. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See Initiation Checklist*, at pages 3 and 4. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act are also met.

Accordingly, the Department determines that this petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Id.*

Export Price and Normal Value

The following are descriptions of the allegations of sales at LTFV upon which our decision to initiate this investigation is based. Based on the information submitted in the petition, adjusted where appropriate, we are initiating this investigation, as discussed below and in the *Initiation Checklist*.

The Department has analyzed the information in the petition and considers the country-wide import statistics for the anticipated POI and market information used to calculate the

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

estimated margin for the subject country to be sufficient for purposes of initiation. *See Initiation Checklist*, at page 3. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculation, if appropriate.

Export Price

To calculate export price (EP), the petitioner provided: (1) a direct price quotation of a mesh-top T-leg unit, with pad and cover, from a major Chinese producer and exporter of ironing tables to the United States; and, (2) a bid offer from an unknown competing vendor. The price quotation provided by the petitioner for the subject merchandise was determined to be sufficient for initiation purposes. Since the petitioner was unable to document who the supplier was, we did not consider the bid offer as a basis for EP. Should the need arise to use any of this information as facts available under section 776 of Tariff Act of 1930 (the Act) in our preliminary or final determinations, we may reexamine the information and revise the margin calculations, if appropriate. *See Petition*, at page 17.

The ironing table model referenced in the price quotation represents the single dominant design that pervades the U.S. market. *See Initiation Checklist*, at page 6. Given the terms of sale applicable to the price quotation, the petitioner made no adjustments to EP because the reliance upon the sale price offered by the seller reflects a conservative approach.

Normal Value

The petitioner asserted that the PRC is an NME country and no determination to the contrary has yet been made by the Department. In previous investigations, the Department determined that the PRC is an NME. *See, e.g., Final Determination on Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002); *Final Determination on Cold-Rolled Carbon Steel Flat Products from the People's Republic of China*, 67 FR 62107 (October 3, 2002). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Because the PRC's status as an NME remains in effect, the petitioner determined the dumping margin using a factors of production (FOP) analysis.

For the normal value (NV) calculation, the petitioner based the FOP analysis, with respect to raw materials, labor, and energy, as defined by section 772(c)(3) of the Act, on its knowledge and experience of the ironing board industry and ironing board production process, and, where applicable, on a physical examination of a Chinese mesh-top T-leg ironing table. The petitioner also added to the FOP values an amount for factory overhead, selling, general, and administrative expenses, and profit, as well as an amount for packing.

Pursuant to section 773(c) of the Act, the petitioner asserted that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) at a level of development comparable to the PRC in terms of per capita gross national income (GNI), which is the current World Bank term for what was previously termed ''Gross National Product'' (GNP); and, (2) a significant producer of comparable merchandise. The petitioner further notes that India has often been the primary surrogate country for PRC cases. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002). Furthermore, the petitioner has been able to obtain all of the necessary data to value the factors of ironing table production in India. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation. *See Initiation Checklist*, at page 7.

The petitioner identified and quantified the material inputs (*e.g.*, cold-rolled flat-rolled steel, washers, cloth, etc.) based on its knowledge and experience, as well as its physical examination of a Chinese mesh-top T-leg ironing table. The petitioner valued these material inputs based on Indian import statistics for the period of July 2002 through December 2002, as published by the *World Trade Atlas* subscription service, which, in turn, obtains data from the Indian Ministry of Commerce and Industry, Director General, Commercial Intelligence & Statistics. Because some of these values are from a period preceding the POI, the petitioner adjusted for inflation the values to reflect the POI levels, where appropriate, using the Indian Wholesale Price Index (WPI) (compiled by the Indian ministry of Commerce and Industry, Office of the Economic Advisor). *See Initiation Checklist*, at page 6.

Based on its knowledge of Chinese ironing-table producing equipment, the petitioner was able to quantify the amount of electricity consumed. The petitioner valued electricity based on the Indian publication *Electricity for Industry*, for the fourth quarter 2001, as maintained by the International Energy Agency on its website (http://www.iea.org/statist/keyworld2002/key2002/ p__0505.htm). That value was then adjusted for inflation on the basis of the Indian monthly WPI for Electricity for Industry. *See Initiation Checklist*, at page 7.

To determine the quantity of natural gas used in the heat curing finishing process, the petitioner relied on its own knowledge and experience. To value natural gas, the petitioner used a value derived from the Indian company Gail (India) Ltd., for May through September 2002. *See Initiation Checklist*, at page 7.

The petitioner valued labor by applying the Department's regression-based wage rate for the PRC, in accordance with section 351.408(c)(3) of the Department's regulations, to the corresponding yield rates for each process.

For manufacturing overhead, selling, general, and administrative expenses, and profit, the petitioner relied upon the publicly available financial data of Godrej & Boyce Manufacturing Company Ltd. (Godrej). The Department recently relied upon this data in another antidumping investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002). Godrej is an Indian producer of metal furniture, including folding metal tables that is sufficiently similar to metal-top ironing tables in terms of materials and production processes to be considered comparable merchandise. *See Initiation Checklist*, at page 8.

Based on the information provided by the petitioner, we believe that the surrogate values represent information reasonably available to the petitioner and are acceptable for purposes of initiating this investigation. See Initiation Checklist, at page 8.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of ironing tables from the PRC are being, or are likely to be, sold at LTFV.

Based on a comparison of EP to NV, the petitioner calculated an estimated dumping margin of **59.32** percent. A summary of the margin calculation is

contained in the *Initiation Checklist* at Attachment III.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including the petitioner's import data, lost sales data, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist*, at page 4 and Attachment II.

Initiation of Antidumping Investigation

Based on our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping investigation to determine whether imports of ironing tables from the PRC are being, or are likely to be, sold in the United States at LTFV. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may reexamine the information and revise the margin calculations, if appropriate. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the petition have been provided to representatives of the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by August 14, 2003, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of ironing tables from the PRC. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published in accordance with section 777(i) of the Act.

Dated: July 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary

[FR Doc. 03–19025 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon from Chile: Final Results of Antidumping Duty Changed Circumstances Review, Revocation of Order, and Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of antidumping duty changed circumstances review; revocation of order; and rescission of administrative review.

SUMMARY: On May 23, 2003, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances review with the intent to revoke the antidumping order on fresh Atlantic salmon from Chile. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Fresh Atlantic Salmon from Chile*, 68 FR 28196 (May 23, 2003) (Initiation Notice). On July 1, 2003, based on the fact that domestic parties have expressed no interest in the continuation of the order, the Department published the preliminary results of the changed circumstances review and preliminarily revoked this order, retroactive to July 1, 2001, with respect to entries of fresh Atlantic salmon from Chile. *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Fresh Atlantic Salmon from Chile*, 68 FR 39058 (July 1, 2003) (Preliminary Results). We gave interested parties an opportunity to comment on both the Initiation Notice and the Preliminary Results, but received no comments. Therefore, the Department hereby revokes the order on fresh Atlantic salmon from Chile for all entries that were entered, or withdrawn from the warehouse, on or after July 1, 2001, the first day after the last completed administrative review in this proceeding. As the result of the revocation of the order, the Department also is rescinding the on-going administrative review of fresh Atlantic salmon from Chile covering the period July 1, 2001, through June 30, 2002.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Keith Nickerson or Constance Handley, at (202) 482–3813 or (202) 482–0631, respectively; AD/CVD Enforcement Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1998, the Department issued an antidumping duty (AD) order on fresh Atlantic salmon from Chile. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon from Chile*, 63 FR 40699 (July 30, 1998). On July 1, 2002, the Department issued a notice of opportunity to request the fourth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 44172 (July 1, 2002).

On July 31, 2002, in accordance with 19 CFR 351.213(b)(2003), L.R. Enterprises, Inc. (L.R. Enterprises) requested a review of 90 producers/exporters of fresh Atlantic salmon. Twelve respondents also requested reviews of themselves. On August 27, 2002, the Department published the notice of initiation of this AD administrative review, covering the period July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). L.R. Enterprises subsequently withdrew its request for review of all but 13 of these companies. For a detailed discussion of L.R. Enterprises' withdrawals, as well as a listing of which respondents requested reviews, *see Notice of Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile*, 67 FR 76378 (December 12, 2002).

On April 29, 2003, L.R. Enterprises withdrew its request that the Department conduct reviews of the remaining 13 producers/exporters of fresh Atlantic salmon from Chile. Furthermore, L.R. Enterprises stated that it had no interest in maintaining the AD order. Subsequently, by letters dated April 29, 2003, five U.S. producers of fresh Atlantic salmon including

Heritage Salmon Inc., Maine Nordic Salmon, Stolt Sea Farms Inc., Cypress Island Inc., and Atlantic Salmon of Maine, requested that the Department initiate a changed circumstances review for the purpose of revoking the AD order on the subject merchandise. On May 2 and 7, 2003, L. R. Enterprises and Trumpet Island Salmon Farm Inc., respectively, submitted their requests to the Department for the initiation of a changed circumstances review for the purpose of revoking the AD order. All parties requested that the Department grant revocation of the AD order retroactive to July 1, 2001, the first day of the period of review covered by the on-going fourth administrative review.

On May 23, 2003, the Department published a notice of initiation of a changed circumstances review with the intent to revoke the AD order on fresh Atlantic salmon from Chile. In the Initiation Notice, we indicated that interested parties could submit comments for consideration in the Department's preliminary results no later than 20 days after publication of the initiation of the review, and submit rebuttal to those comments no later than 10 days following the submission of comments. We did not receive any comments on the Initiation Notice.

On July 1, 2003, the Department published the preliminary results of the changed circumstances review and preliminarily revoked this order with respect to all unliquidated entries for all entries of fresh Atlantic salmon from Chile that were entered, or withdrawn from the warehouse, on or after July 1, 2001, based on the fact that domestic parties have expressed no interest in continuation of the order. In addition, we stated our intention to rescind the fourth administrative review. In the Preliminary Results, we stated that interested parties could submit case briefs to the Department no later than 10 days after the publication of the Preliminary Results notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in those case briefs, five days subsequent to this due date. We did not receive any comments on the Preliminary Results.

Scope of the Order

The product covered by this order is fresh, farmed Atlantic salmon, whether imported ''dressed'' or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. ''Dressed'' Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the order. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the ''pin bones'' in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is ''not farmed'' (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this order is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of Changed Circumstances Review and Revocation of the AD Order

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant review of a final affirmative antidumping determination. The Department's regulations at 19 CFR 351.222(g)(2) provide that the Department will conduct a changed circumstances review under 19 CFR 351.216 if the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination exist. The Department may revoke an order (in whole or in part), if the Secretary determines that: (i) producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. 19 CFR 351.222(g)(1)(i); *See also Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001) and 19 CFR 351.208(c). According to the record of this case, the following are all of the known U.S. producers of fresh Atlantic salmon: L.R. Enterprises, Heritage Salmon Inc., Maine Nordic Salmon, Stolt Sea Farms Inc., Cypress Island Inc., Atlantic Salmon of Maine, and Trumpet Island Salmon Farm Inc. Based upon the statement of no interest by the U.S. producers referenced above and the fact that the Department did not receive any comments during the comment periods following the initiation and preliminary results of this review, the Department hereby revokes this order for all entries of fresh Atlantic salmon from Chile that were entered, or withdrawn from warehouse, on or after July 1, 2001, the first day after the last completed administrative review in this proceeding, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216.

Rescission of Antidumping Duty Administrative Review

On August 27, 2002, the Department published in the **Federal Register** (67 FR 55000) a notice of initiation of an administrative review for the period July 1, 2001, through June 30, 2002. As the result of the revocation of the order, the Department is rescinding the on-going administrative review of fresh Atlantic salmon from Chile pursuant to section 751(d)(3) of the Act.

Instructions to the Customs Service

In accordance with 19 CFR 351.222, the Department will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of fresh Atlantic salmon from Chile, entered, or withdrawn from warehouse, on or after July 1, 2001, which is the first day after the last completed review covering the 2001–2002 review period. The Department will further instruct the BCBP to refund with interest any estimated duties collected with respect to unliquidated entries of fresh Atlantic salmon from Chile entered, or withdrawn from warehouse, on or after July 1, 2001, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written

notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice of final results of antidumping duty changed circumstances review and revocation of the antidumping duty order are in accordance with sections 751(b) and (d), and 777(i) of the Act and 19 CFR 351.222(g). The 2001–2002 antidumping duty administrative review of fresh Atlantic salmon from Chile is rescinded in accordance with section 751(d)(3) of the Act.

Dated: July 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary.

[FR Doc. 03–19022 Filed 7–24–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Final Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final rescission, in part, of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has determined that the first administrative reviews of five PRC honey exporters/producers should be rescinded.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Brandon Farlander at (202) 482–3019 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Case History

On December 17, 2002, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 67 FR 77222 (December 17, 2002). On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) in this proceeding, requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on honey from the People's Republic of China (PRC) covering the period May 11, 2001, through November 30, 2002.[1]

Petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by ten PRC producers/exporters, including Anhui Native Produce Import & Export Corp. (Anhui), Inner Mongolia Autonomous Region Native Produce and Animal By-Products (Inner Mongolia), Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei), Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Sichuan Dubao), and Wuhan Bee Healthy Co., Ltd. (Wuhan).[2] We also received a timely request from Zhejiang Native Produce and Animal By-Products Import & Export Corp., a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (collectively Zhejiang), that the Department conduct an administrative review of entries of subject merchandise exported by Zhejiang during the POR. On January 22, 2003, the Department initiated an administrative review of all requested PRC honey exporters/producers. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 3009 (January 22, 2003).

In a separate proceeding, the Department received timely requests from Shanghai Xiuwei and Sichuan Dubao, in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month. On February 5, 2003, we published a *Notice of Initiation of New Shipper Antidumping Duty Reviews,* 68 FR 5868 (February 5, 2003) initiating new shipper reviews of Shanghai Xiuwei's and Sichuan Dubao's sales during the same POR as this administrative review.[3]

On May 6, 2003, the Department preliminarily determined to rescind, in part, the administrative reviews of Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. See Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III; Intent to Partially Rescind Administrative Reviews (May 6, 2003) (Rescission Memo).

As discussed in the above-referenced Rescission Memo, this administrative review is intended to cover shipments of subject merchandise by Anhui and Inner Mongolia during the POR of May 11, 2001, through November 30, 2003. However, based upon our shipment data query and examination of entry documents, we determined that Anhui and Inner Mongolia did not ship subject merchandise during this period.

As discussed in the Department's Rescission Memo, the new shipper reviews of Shanghai Xiuwei and Sichuan Dubao covered the same POR as this administrative review. The Department also determined, with respect to Wuhan, that there were no other entries to review other than those currently under review in its new shipper review. Therefore, we determined that Shanghai Xiuwei, Sichuan Dubao, and Wuhan were new shippers and should not be subject to this proceeding.

We invited parties to comment on our Rescission Memo. On May 21, 2003, we received responses from Wuhan, Inner Mongolia, and Anhui in support of the Department's decision to rescind their respective administrative reviews. We did not receive comments from petitioners, Shanghai Xiuwei, nor Sichuan Dubao. Furthermore, interested

[1] On January 27, 2003, the Department clarified that the period of review (POR) for certain PRC honey exporters/producers, including Wuhan, Shanghai Xiuwei, and Sichuan Dubao is February 10, 2001, through November 30, 2002. *See* Memorandum to the File through Donna L. Kinsella, Case Manager, Office 8; POR for Exporters of Honey from the People's Republic of China with Affirmative Critical Circumstances Findings (January 27, 2003) for further details.

[2] The other five PRC honey exporters/producers included Henan Native Produce and Animal By-Products Import & Export Company, High Hope International Group Jiangsu Foodstuffs Import and Export Corp., Kunshan Foreign Trade Company, Shanghai Eswell Enterprise Co., Ltd., and Zhejiang.

[3] Moreover, the Department currently is conducting a six-month new shipper review of Wuhan's sales during the period December 1, 2001, through May 31, 2002. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews,* 67 FR 50862 (August 6, 2002). *See also Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China,* 68 FR 33099 (June 3, 2003).

parties did not submit case briefs or request a hearing. In summary, all parties commenting on the Rescission Memo supported the Department's preliminary decision to rescind these reviews, and there have been no changes since the Department placed its Rescission Memo on the record of this administrative review.

Scope of Review

The merchandise under review is honey from the PRC. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under item 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Rescission, in Part, of First Administrative Review

We provided interested parties with an opportunity to comment on our preliminary determination to rescind the administrative reviews of Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. As noted above, we received responses from Wuhan, Inner Mongolia, and Anhui in support of the Department's decision to rescind their respective administrative reviews. As discussed in detail in our Rescission Memo, because Anhui and Inner Mongolia made no entries, exports or sales of subject merchandise to the United States during the POR, we determined that these companies were non-shippers. Furthermore, because Wuhan, Shanghai Xiuwei, and Sichuan Dubao made no entries, exports or sales of subject merchandise to the United States not currently under review in their respective new shipper reviews, the Department determined to treat these companies as new shippers not subject to this administrative review. In accordance with §§ 351.213(d)(3) and 351.214(j)(1) of the Department's regulations, we are rescinding our administrative reviews of Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. *See, e.g., Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Partial Rescission of Review,* 67 FR 68987 (November 14, 2002); *see also, Frozen Concentrated Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 67 FR 40913 (June 14, 2002)).

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

This determination is issued and published pursuant to sections 751(a) and 777(i) of the Act.

Dated: July 22, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–19020 Filed 7–24–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Extension of Time Limit for Preliminary Results of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on honey from the People's Republic of China until no later than December 31, 2003. The period of review for those entities with an affirmative critical circumstances finding is February 10, 2001, through November 30, 2002. For all other companies, the period of review is May 11, 2001, through November 30, 2002.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Brandon Farlander at (202) 482–3019 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and § 351.213(h)(2) of our regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

Background

On December 10, 2001, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order covering honey from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China,* 66 FR 63670 (December 10, 2001). On December 17, 2002, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,* 67 FR 77222 (December 17, 2002). On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) in this proceeding, requested, in accordance with § 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on honey from the PRC covering the period May 11, 2001, through November 30, 2002.[1]

The petitioners requested that the Department conduct an administrative

[1] On January 27, 2003, in a memorandum to the file, we determined that the POR for entities with affirmative findings of critical circumstances to be February 10, 2001, through November 30, 2002. *See* Memorandum to the File from Angelica L. Mendoza through Donna L. Kinsella, dated January 27, 2003 for further details.

review of entries of subject merchandise made by ten PRC producers/exporters, which included Shanghai Eswell Enterprise Co., Ltd. (Shanghai Eswell), Zhejiang Native Produce and Animal By-Products Import & Export Corp., a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (Zhejiang), and Wuhan Bee Healthy Co., Ltd. (Wuhan). We also received a timely request from Zhejiang (active respondent in the original investigation) that the Department conduct an administrative review of entries of subject merchandise it exported to the United States during the period of review (POR). On January 22, 2003, the Department initiated an administrative review for all of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 68 FR 3009 (January 22, 2003).

On February 20, 2003, the Department issued antidumping duty questionnaires to all ten PRC producers/exporters of the subject merchandise. On April 4, 2003, we received responses to Section A of our antidumping duty questionnaires from Zhejiang and Wuhan. On April 18, 2003, we received responses to Sections C and D of our antidumping duty questionnaires from Zhejiang and Wuhan.

On April 22, 2003, petitioners submitted a withdrawal of request for review for Shanghai Eswell. On May 6, 2003, the Department rescinded, in part, the administrative review of the antidumping duty order on honey with respect to Shanghai Eswell. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 23963 (May 6, 2003).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations, we determine that it is not practicable to complete this administrative review within the statutory time limit of 245 days. The Department finds that it is not practicable to complete the preliminary results of this administrative review within this time limit because we need additional time to research the appropriate surrogate value used to value raw honey. Additionally, the Department is analyzing the Indian financial statements currently on the record to determine the appropriate surrogate financial ratios to use in our calculation of normal value. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of these preliminary results by an additional 120 days. The preliminary results will now be due no later than December 31, 2003. The final results will, in turn, be due 120 days after the date of issuance of the preliminary results, unless extended.

Dated: July 21, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–19021 Filed 7–24–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-507–501]

Notice of Rescission of Countervailing Duty Administrative Review: In-shell Pistachios from the Islamic Republic of Iran

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On April 16, 2003, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on in-shell (raw) pistachios from the Islamic Republic of Iran (Iran), covering one manufacturer/exporter of the subject merchandise, Rafsanjan Pistachio Producers Cooperative (RPPC), and the period January 1, 2002, through December 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 19498 (April 21, 2003). This review has now been rescinded due to petitioners'[1] withdrawal of their request for an administrative review.

EFFECTIVE DATE: July 25, 2003

FOR FURTHER INFORMATION CONTACT: Darla Brown or Eric B. Greynolds, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2849 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2003, the Department received a timely request from the CPC for an administrative review of the countervailing duty order on in-shell (raw) pistachios from Iran. On April 16, 2003, the Department initiated an administrative review of this order for the period January 1, 2002, through December 31, 2002. On July 9, 2003, the CPC submitted a timely letter requesting to withdraw their request for the above-referenced administrative review.

Scope of the Review

The product covered by this administrative review is in-shell (raw) pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Rescission of Review

On July 9, 2003, the CPC submitted a letter requesting to withdraw its request for the above-referenced administrative review. *See* letter from the CPC to the Department dated July 9, 2003, on file in the Central Records Unit, Room B-099, main building of the Department of Commerce. This letter was timely filed within 90 days of the publication notice of initiation of the requested review.

Having accepted the CPC's request, the Department hereby rescinds the administrative review of in-shell (raw) pistachios from Iran for the period January 1, 2002, to December 31, 2002. *See* 19 CFR section 351.213(d)(1). The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection (Customs) within 15 days of publication of this notice.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: July 21, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–19024 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] Petitioners are the California Pistachios Commission (CPC) and its members.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Certain Softwood Lumber Products from Canada: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

SUMMARY: On March 27, 2003, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances review to determine whether entries naming Monterra Lumber Mills Limited (Monterra), a Canadian producer of softwood lumber products and an interested party in this proceeding, as manufacturer and exporter should receive the ''All Others'' cash deposit rate of 8.43 percent. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 68 FR 14947 (March 27, 2003) (Initiation Notice). We have preliminarily determined that entries naming Monterra as manufacturer and exporter should receive the ''All Others'' cash deposit rate of 8.43 percent.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Keith Nickerson or Constance Handley, at (202) 482–3813 or (202) 482–0631, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

As a result of the antidumping duty order issued following the completion of the less-than-fair-value investigation of certain softwood lumber products from Canada, imports of softwood lumber from Monterra, a subsidiary of respondent company Weyerhaeuser Company Limited (Weyerhaeuser), became subject to a cash deposit rate of 12.39 percent (*See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Certain Softwood Lumber Products from Canada*, 67 FR 36068 (May 22, 2002)). On February 4, 2003, Monterra notified the Department that effective December 23, 2002, Weyerhaeuser sold its interest in Monterra to 1554545 Ontario, Inc. (1554545 Ontario), a wholly owned subsidiary of Tercamm Corp., a privately owned Canadian investment company. As a result, Monterra requested that the Department conduct a changed circumstances review in order to conclude that, effective December 23, 2002, it be subject to the ''All Others'' cash deposit rate of 8.43 percent, rather than Weyerhaeuser's 12.39 percent rate. On March 27, 2003, the Department published a notice of initiation of a changed circumstances review to determine whether entries naming Monterra as manufacturer and exporter should receive the ''All Others'' cash deposit rate of 8.43 percent.

On April 29, 2003, Monterra, at the request of the Department, submitted additional information and documentation regarding its sale by Weyerhaeuser to 1554545 Ontario. On May 8, 2003, the petitioner[1] submitted comments on the information provided by Monterra and requested that the Department issue a supplemental questionnaire. On May 21, 2003, the Department issued a supplemental questionnaire requesting further details and documentation surrounding the sale and purchase, which was provided by Monterra in its subsequent submission of June 4, 2003. The petitioner did not comment on Monterra's June 4, 2003, submission.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate federal register notices.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I-joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge-glued wood, properly classified under HTSUS item 4421.90.98.40
- properly classified complete door frames.
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.
- *Box-spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.
- *Radius-cut box-spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

[1] The petitioner in this proceeding is the Coalition for Fair Lumber Imports Executive Committee.

• *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
• *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and 2) if the importer establishes to U.S. Bureau of Customs and Border Protection's (BCBP) satisfaction that the lumber is of U.S. origin.[2]
• *Softwood lumber products contained in single family home packages or kits*,[3] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:
1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;
2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;
3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;
4. The whole package must be imported under a single consolidated entry when permitted by the BCBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;
5. The following documentation must be included with the entry documents:
• a copy of the appropriate home design, plan, or blueprint matching the entry;
• a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
• a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
• in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that the BCBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Monterra contends that, because it is no longer owned by Weyerhaeuser, it should be subject to the ''All Others'' cash deposit rate. In accordance with 19 CFR 351.216 (c), due to the change in ownership, the Department found good cause to initiate a changed circumstances review despite the final determination being in existence for fewer than 24 months. Therefore, we initiated a changed circumstances administrative review pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(c) to determine whether entries naming Monterra as manufacturer and exporter should receive the ''All Others'' cash deposit rate of 8.43 percent.

In reviewing the information provided by Monterra, the Department has preliminarily found that Monterra, as a result of the sale by Weyerhaeuser and purchase by 1554545 Ontario on December 23, 2002, is no longer owned by or in any way affiliated with Weyerhauser and, as a result, should not be subject to Weyerhaeuser's cash deposit rate of 12.39 percent. In addition, we note that during the antidumping duty investigation of certain softwood lumber from Canada, the Department granted an exemption to Weyerhaeuser allowing it to exclude reporting the U.S. sales by Monterra since these sales represented such a small amount of Weyerhaeuser's total U.S. sales.[4] As a result, Monterra's sales had no effect on the calculation of Weyerhaeuser's cash deposit rate of 12.39 percent. Therefore, for the above-stated reasons, we have preliminarily determined that entries naming Monterra as manufacturer and exporter should receive the ''All Others'' cash deposit rate of 8.43 percent.

We are denying Monterra's request to have the cash deposit rate of 8.43 percent made effective as of December 23, 2002. Because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactively. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880 (November 30, 1999). However, on May 30, 2003, Monterra requested, during the anniversary month of the publication of the order, an administrative review of those entries to determine the proper assessment rate and receive a refund of any excess deposits. Accordingly, on July 1, 2003, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain softwood lumber products from Canada for 421 companies, including Monterra. (*See Initiation of Antidumping Duty Administrative Review*, 68 FR 39059 (July 1, 2003).)

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 45

[2] As clarified in the Memorandum from Dave Layton, Case Analyst, through Charles Riggle, Program Manager, and Gary Taverman, Office Director, to Bernard Carreau, Deputy Assistant Secretary, concerning the Certain Softwood Lumber from Canada Scope re: Final Scope Ruling in Response to Request by the Coalition for Fair Lumber Imports Executive Committee regarding U.S.-origin Lumber Undergoing Additional Processing, dated January 22, 2003.

[3] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[4] *See* Memorandum from Constance Handley, Senior Import Compliance Specialist, to Gary Taverman, Office Director, concerning the Antidumping Duty Investigation of Certain Softwood Lumber from Canada, dated July 16, 2001.

days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Due to the fact that the petitioner has not agreed to the outcome of this proceeding, the Department will conduct this review in accordance with section 351.216(e) of its regulations. Thus, consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated.

This notice is in accordance with sections 751(b)(1) and 777(I)(1) of the Act and 19 CFR 351.216, 351.221(b), and 351.222(g)(3)(I).

Dated: July 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary.

[FR Doc. 03–19023 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021028257–3178–02]

NOAA Office of Ocean Exploration Announcement of Funding Opportunity, Fiscal Year 2004

AGENCY: Office of Ocean Exploration, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA's Office of Ocean Exploration (OE) is seeking pre-proposals and full proposals for grants, cooperative agreements, and other financial collaborations to implement OE's mission to expand our knowledge of the ocean's physical, chemical, biological and archaeological characteristics, processes, and resources. OE's mission objectives also include conveying the experience and knowledge gained in all of OE's missions though a structured program of public education and outreach. Many of OE's missions will be accomplished by projects, experiments, and expeditions to unknown, or poorly known, ocean and Great Lakes regions. Consistent with OE's intent to explore and discover, successful OE proposals will be relatively broad-based in terms of their objectives and they may be relatively high-risk. Prospective applicants are encouraged to visit the Ocean Explorer Web site: *http://oceanexplorer.noaa.gov* in order to familiarize themselves with past and present OE activities.

DATES: Pre-proposals are required and must be postmarked or received by September 3, 2003. Full proposals must be postmarked or received by October 28, 2003. In the event that these dates fall on a weekend or holiday, the effective date shall be the first working day after the date specified. Email and/or facsimile pre-proposals and/or proposals submissions will not be accepted.

ADDRESSES: Send pre-proposals and proposals to NOAA, Office of Ocean Exploration, ATTN: OE Science Program Coordinator, Bldg. SSMC3, Rm. 10221, 1315 East West Highway, Silver Spring, MD 20910. Email and/or facsimile pre-proposals and/or proposals submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, OE Science Program Coordinator, or Randi Neff, OE Program Grants Coordinator, NOAA Office of Ocean Exploration, 301–713–9444, facsimile 301–713–4252 or submit inquiries via email to the Frequently Asked Questions address: *oar.oe.FAQ@noaa.gov.* Email inquiries should include the Principal Investigator's name in the subject heading. A copy of this notice, as well as ancillary information, will be posted on the OE Web site *http://www.explore.noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance Number: 11.460.

II. Program Description

A. Background

In June 2000, a panel of leading ocean explorers, scientists, and educators developed a national strategy for exploring the oceans, and presented its recommendations in a report entitled, *Discovering Earth's Final Frontier: A U.S. Strategy for Ocean Exploration* (*http://oceanpanel.nos.noaa.gov*). NOAA was selected as the lead Federal agency to guide a national program in ocean exploration and the Office of Ocean Exploration was established in 2001.

B. Program Mission

The mission of OE is to search, investigate, and document unknown and poorly known areas of the ocean and Great Lakes through interdisciplinary exploration, and to advance and disseminate knowledge of the ocean environment and its physical, chemical, biological, and historical resources.

III. Program Notice

A. Notice Objectives

The purpose of this announcement is to invite the submission of pre-proposals and full proposals for grants, cooperative agreements, and other financial collaborations whose objectives are to explore the ocean and map its resources, to gain new insights about its physical, chemical, biological, and archaeological characteristics, and its living and non-living resources.

B. Program Guidance

Themes. Persons submitting proposals may elect to address these preferred themes, developed in part from eight regional workshops of ocean scientists, explorers, and educators from public, private and commercial organizations. Applicants with non-OE-funded shiptime, projects, or other resources may wish to propose supplementing them by the addition of tasks or objectives that are consistent with (and are, therefore, eligible for funding by) the OE program mission. The themes are (in no order of priority):

1. Mapping ocean characteristics and bathymetry;
2. Marine life inventories: vertebrate, invertebrate, macro-organisms and micro-organisms;
3. Marine archaeology;
4. Characterization of benthic and pelagic habitats and ecosystems;
5. Locating and mapping corals (including deep corals);
6. New ocean resources;
7. Passive ocean acoustics;
8. Technology: innovative applications and leveraged development;
9. Outreach: communicating exploration efforts in new and innovative ways to broad audiences.

Workshop reports can be viewed online at *http://explore.noaa.gov/workshops/welcome.html.*

C. Program Priorities

The following are requirements for proposals successfully funded by OE.

Outreach & Education. All funded applicants and collaborators will be required to cooperate with OE in facilitating education and outreach activities. This may entail participation in the development of lesson plans, professional development for teachers, accommodation of a teacher/educator-at-sea, and at-sea media participation.

Data Management. In accepting full or partial OE sponsorship, each applicant is obligated to meet certain data management requirements including:

1. Applicants will provide metadata, *e.g.*, number and type of data, and description of the data collected immediately upon completion of a project cruise. Other data or data products may also be required at the discretion of the OE Director.

2. Applicants will provide OE and the public access to acquired data sets collected as soon as practical and, in no case, later than one year following the date of collection, unless an extension is specifically granted by OE.

Proposals should include a description and justification of data funding needs and explain how data will be made accessible or available to the public.

3. NOAA's Ocean Explorer Web site (*http://oceanexplorer.noaa.gov*) is the principal vehicle for chronicling and documenting all missions supported by NOAA and OE. Applicants and mission participants will be required to provide material (*i.e.*, throughout the mission) for this site such as cruise tracks, preliminary bathymetry, characterization of data collected, photographic or other images from the mission, and participants interviews, essays, or written materials. Funded applicants will be required to cooperate with the NOAA Ocean Explorer website team which may include accommodation of a NOAA web team member. (*See* Ancillary Information at: *http://explore.noaa.gov*).

D. Funding Considerations

OE will give priority to the following factors when making funding decisions: (1) Proposals that are interdisciplinary in approach; (2) Proposals which have substantial collaborations with multiple institutions, government, academia, or industry; (3) Proposals whose costs are leveraged with available OE funds; (4) The propriety of the level of investment for OE; (5) Applicants which express a willingness to facilitate and participate in outreach and education activities that OE supports; and (6) The heightened level of risk.

IV. Funding Availability

FY2004 funding for this program has not yet been appropriated. Not all available FY2004 program funds will be awarded through this announcement. Publication of this Notice does not obligate NOAA to award any specific project or to obligate all or any part of the available funds.

Proposals are encouraged for collaborations and explorations ranging from the tens of thousands of dollars to funds appropriate for up to two months of expeditionary exploration work. Multi-year proposals may be accepted, although the present principal focus of the OE program will be on one-year projects and expeditions. Out-year funding will be contingent upon factors including successful accomplishment of prior-year objectives as well as availability of program funding and other relevant resources.

V. Eligibility

Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, federal, state, local and Indian tribal governments. Proposals from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA scientists shall be effected by an intra-agency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer. *Please note:* Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

There is no limit to the number of pre-proposals and proposals an applicant may submit. Applicants that fail to meet eligibility requirements and guidelines for submission will not be funded (*see* section V. and VI.)

Cost Sharing

Cost sharing or matching is not required by this program (However, *see* section II.D. Funding Considerations (3)).

VI. Guidelines for Submission

There will be a two-stage competition with pre-proposals utilized for an initial selection process. Full proposals will be solicited from investigators who submit successful pre-proposals. An approved pre-proposal is a prerequisite for submission of a full proposal. Pre-proposals will be judged in terms of their consistency with OE's program mission and themes. Available program funds will also be taken into consideration (*See* **DATES** for submission deadlines and **ADDRESSES** for hard copy submission address).

A. Preliminary Proposals

A pre-proposal should include a summary of the proposed research, project priorities, a statement of objectives, and a description of how the proposed project relates with OE's mission. The area of proposed operations must be clearly defined (*e.g.*, including latitude, longitude, and depth). Required platforms or other critical assets should be identified. The pre-proposal should make clear any time or other operational constraints, especially with regard to field operations. Any auxiliary funding sources for the proposed project should be identified. Pre-proposals must identify all collaborators and include a summary budget. Pre-proposals must not exceed two typewritten single-sided pages and must use 12-point font. Additionally, pre-proposals must include a completed pre-proposal cover sheet (available electronically at *http://explore.noaa.gov*) (*see* **FOR FURTHER INFORMATION CONTACT** to request a hard copy version). The applicant's last name must be typed in the bottom right-hand corner of each page. Three hard copies of the complete pre-proposal must be postmarked or received by September 3, 2003. *See* **ADDRESSES** for hard copy submission address.

B. Proposals

All proposals must include the following, packaged in the order listed here:

(a) completed proposal cover sheet (available electronically at *http://explore.noaa.gov*);

(b) maximum half-page executive summary;

(c) maximum 15-page description of the entire project (including work plan, schedule, and collaborations);

(d) summary of relevant current funding support;

(e) brief resumes for each investigator, including recent relevant publication references,

(f) *SF–424*, Application for Federal Assistance (Rev July 1997) (available electronically at *http://explore.noaa.gov*);

(g) detailed budget (including all ship and equipment costs) and

(h) budget narrative (including justification for non-standard items).

All pages should be single-sided, single-or double-spaced, typewritten margin in a minimum 12-point font on an 8½″ x 11″ page. The bottom right-hand corner of every page, excluding cover sheet, must be numbered and labeled with the applicant's last name. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are to be included in the 15-page limit. The cover sheet, executive summary, current support, resumes, references/literature cited, *SF–424* Application for Federal Assistance, budgets, and budget narrative sections need not be counted against the 15-page limit. All information needed for review of the proposal should be included in the main text, not submitted as appendices.

The proposal must clearly explain each participant's efforts and their respective requests for OE funds, as well as any cost-sharing. Separate budgets within the single proposal must be provided if more than one funding action is anticipated (*e.g.*, if funds are to be allocated to more than one institution or agency). Three hardcopies of the proposal are required. For the proposal only, in addition to the hard copies it is highly recommended that applicants submit a digital version (cdrom, floppy disk, or zip disk) of a complete proposal, preferably in Adobe .pdf format in order to facilitate proposal review. All proposals, hard copies and digital versions, must be postmarked or received by October 28, 2003. If applicants wish reviewers to receive included color graphics, glossy photographs, or other unusual materials, applicants are encouraged to submit a total of 10 complete hard copies. For further information, *see Announcement of Opportunity: Application Kit* at *http://www.explore.noaa.gov/* or *see* **ADDRESSES** and/or **FOR FURTHER INFORMATION CONTACT**.

Intergovernmental Review. Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site: *http://www/whitehouse.gov/omb/grants/spoc.html.*

C. Forms

The following government forms shall be required only from those applicants subsequently recommended for award. Forms must be submitted in triplicate, each with original signatures. These forms include:

SF–424A Budget Information—Nonconstruction Programs (Rev July 1997)

SF–424B Assurances—Nonconstruction Programs

SF–LLL Disclosure of Lobbying Activities

Form CD–346 Application for Funding Assistance,

Form CD–511 Certification Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying,

Form CD–512 Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying and shall be used in applying for financial assistance, and, if applicable, please submit your most current negotiated indirect cost rate agreement.

All necessary forms may be obtained via the OE Web site (*see:* OE Application Kit at *http://explore.noaa.gov*, for hard copies, *see* **ADDRESSES** and/or **FOR FURTHER INFORMATION CONTACT**).

Proposals received after the deadline, or proposals that deviate from the format described in this Notice will not be accepted.

VII. Pre-Proposal and Proposal Review and Selection Process

A. Pre-Proposal Evaluation

The OE Director will make the decision to request or not request full proposal submissions based on the following factors: (1) Proposal consistency with the format of this announcement (2) Consistency with the OE program and mission (3) Applicability of the project objectives to OE themes and project funding considerations (4) Extent to which the proposal focuses on a geographical area that is unknown or poorly known (5) Reasonableness of project costs relative to available program funds (6) Logistical feasibility (*e.g.*, ship availability), given OE resource availability. The final decision to submit a full proposal is up to the applicant.

B. Proposal Evaluation

Proposals will be evaluated and rated individually by (a) independent peer panel review or by (b) correspondence review. The evaluators will be composed of scientists, engineers, social scientists, economists, outreach specialists, and resource managers as appropriate to the scope of proposals received in response to this announcement. Some proposals, including those focused on activities such as technology development, organizing and implementing workshops, and outreach activities, will be reviewed by correspondence (*i.e.*, at least three mail peer-reviews) rather than by independent peer panel review. The following criteria will be used to review proposals using the corresponding weight value:

Scientific and Technical merit:

This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. For the OE review process this includes: (a) The scientific and/or technical value of the work proposed, its probability of success, and the applicant's scientific and/or technical capabilities to undertake the proposed work; (b) the anticipated scientific and/or technical impact of the results of the project on the advancement of knowledge within the field(s) of the endeavor. (40%)

Importance/Relevance and Applicability of Proposal to the Program Goals:

This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, international, federal, regional, state, or local activities. For the OE review process this includes the degree to which the proposal addresses and supports OE's mission and this notice's objectives. (20%)

Project Costs:

This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time-frame. For the OE review process this includes the reasonableness of project costs relative to the scope of work proposed. (20%)

Overall qualifications of applicants:

This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. For the OE review process this includes the qualifications of the applicant to accomplish the work proposed. (20%)

All proposals will be rated by the independent peer reviewers or correspondence review panel according to an adjectival scale (that will later be converted into a score) ranging in order of decreasing merit, as follows:

Excellent: Comprehensive, thorough and of exceptional merit, one or more major strengths, no major weaknesses, and any minor weaknesses easily correctable.

Very Good: Competent, one or more major strengths, strengths outweigh

weaknesses, and major weaknesses correctable.

Good: Reasonable, may be strengths and/or weaknesses, weaknesses do not significantly detract from the proposal's viability, any major weaknesses are correctable.

Fair: One or more major weaknesses, weaknesses outweigh strengths, major weaknesses may possibly be corrected or minimized.

Poor: One or more major weaknesses, which will be difficult to correct or may not be correctable.

C. Selection Process

The Selecting Official (the OE Director) in consultation with the OE Chief Scientist will select proposals after considering the peer reviews and the selection factors listed below. In making the final selections, the Selecting Official will endeavor to award in rank order unless the proposal is justifiably selected out of rank order based upon one or more of the selection factors below. The OE Director will have the final authority and responsibility for decisions regarding proposal selection.

The selection factors include the following: (1) The availability of program funding (*i.e.*, feasibility for OE to meet applicants requests given projects costs and logistics); (2) the extent to which the proposal contributes to a balanced national program in terms of distribution of funds by geography/institution/partners/study areas/ and project; (3) the avoidance of duplication with other projects funded or considered for funding by NOAA or other Federal Agencies; (4) the responsiveness to overall program priorities (section III.C.) and policy factors (see section III.D., Funding Considerations); (5) applicant's prior award performance; and (6) partnerships with participation of targeted groups.

High proposal peer review ratings may not result in funding for a given proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to approval of the award. Subsequent administrative processing will be in accordance with current NOAA financial administrative procedures.

The National Science Foundation, the federal agencies of the National Ocean Partnership Program, and other NOAA programs have mission objectives which involve ocean research and technology development. Examples of NOAA agencies and programs are: the National Undersea Research Program, the National Sea Grant College Program, the Arctic Research Office, NOAA Fisheries, and the National Ocean Service. OE anticipates and encourages investigators to seek complementary funding for their proposed projects through linked proposals to these agencies. OE will work with program managers at other agencies to facilitate such projects. OE places a high priority on proposed co-funded projects that receive high ratings through each agency's respective evaluation process. For additional details about these other programs, *see: http://oceanexplorer.noaa.gov.*

D. Notification of Award

Successful applicants will receive an email or letter notifying the applicant that his/her proposal has been recommended for funding. It is the applicant's responsibility to notify all collaborators of the award.

E. Disposition of Unsuccessful Applications

Those proposals not ultimately selected for OE funding will be destroyed.

VIII. Federal Policies and Procedures Applicable to OE

A. Environmental Impact

Applicants whose proposed projects may have an environmental impact should furnish sufficient information to assist proposal reviewers in assessing the potential environmental consequences of supporting the project.

B. Permits and Authorizations

Applicants are responsible for obtaining relevant permits and authorizations required under the laws of the jurisdiction in which the work is to be performed and under U.S. law.

For further information about permits, authorizations or viewing marine mammals and other protected species in the wild please visit the following NOAA Fisheries Web site: *http://www.nmfs.noaa.gov/prot_res/overview/permits.html, http://www.nmfs.noaa.gov/prot_res/MMWatch/MMViewing.html.*

IX. Other Requirements

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 [66 FR 49917], as amended by the **Federal Register** Notice published on October 30, 2002 [67 FR 66109], is applicable to this solicitation.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (5 U.S.C. 553(a)(2)) or any other law for this notice concerning grants, benefits, and contracts. Because notice and comment are not required, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared. This action has been determined to be not significant for purposes of Executive Order 12866.

This notice contains collection-of-information requirements, which are subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043,0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Dated: July 22, 2003.

Julie Scanlon,

Director, Management and Organizational Development, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–18975 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 25, 2003.

Title and OMB Number: Application for Department of Defense Impact Aid for Children with Severe Disabilities; SD Form 816 and SD Form 816C; OMB Number 0704–0425.

Type of Request: Extension.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Average Burden Per Response: 8 hours.

Annual Burden Hours: 400.

Needs and Uses: Department of Defense funds are authorized for local educational agencies (LEAs) that educate military dependent students with severe disabilities and meet certain

criteria. Eligible LEAs are determined by their responses to the U.S. Department of Education (ED) from information they submitted on children with disabilities when they completed the Impact Program form for the Department of Education. This application will be requested of LEAs who educate military dependent students with disabilities who have been deemed eligible for U.S. Department of Education Impact Aid program, to determine if they meet the criteria to receive additional funds from the Department of Defense due to high special education cost of military dependents with severe disabilities that they serve.

Affected Public: State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jackie Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Officer of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–18970 Filed 7–24–03; 8:45 am]

BILLING CODE 5001–08–M

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 25, 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 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 22, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report Form.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 156.

Burden Hours: 702.

Abstract: McNair Program grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collected is also aggregated to provide national information on project participants and program outcomes.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2298. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–18995 Filed 7–24–03; 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 July 14, 2003, the Department of Education published a 30-day regular public comment period notice in the **Federal Register** (Page 41566, Column 2) for the information collection, ''Case Service Report''. The ''Type of Review'' is being corrected from ''Extension'' to ''Reinstatement''. 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: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.*

Dated: July 21, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 03–18950 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA17

National Institute on Disability and Rehabilitation Research (NIDRR)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services (OSERS) announces final priorities for Research Projects, a Research Infrastructure Capacity Building Project, a Technical Assistance Resource Center on Parenting with a Disability Project, and Development Projects under the Disability and Rehabilitation Research Projects (DRRP) Program of NIDRR for fiscal year (FY) 2003 and later years. We take these actions to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority is effective August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)).

The approaches an applicant may take to meet this requirement may include one or more of the following (34 CFR 350.40(b)):

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

Under the DRRP program, we define a research project as basic or applied (34 CFR 350.5). Research is classified on a continuum from basic to applied:

(1) Basic research is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) Applied research is research in which the investigator is primarily interested in developing new knowledge, information, or understanding which can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

In carrying out a research activity under this program (34 CFR 350.13), a grantee must:

(a) Identify one or more hypotheses; and

(b) Based on the hypotheses identified, perform an intensive systematic study directed toward—

(1) New or full scientific knowledge; or

(2) Understanding of the subject or problem studied.

Under the DRRP program, we define a development activity as the use of knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The final priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these final priorities, a specific reference is included for each topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

We published a separate notice of each proposed priority (NPP) in the **Federal Register** on May 9, 2003.

Priority 1—Research Projects (84.133A–1) (68 FR 25014).

Priority 2—Research Infrastructure Capacity Building (84.133A–4) (68 FR 25009).

Priority 3—Technical Assistance Resource Center on Parenting with a Disability (84.133A–5) (68 FR 25017).

Priority 4—Development Projects (84.133A–7) (68 FR 25006).

We have combined these four priorities in this notice of final priorities (NFP).

There are no significant differences between the NPPs and this NFP.

Analysis of Comments and Changes

In response to our invitation in the NPPs, several parties submitted comments.

We discuss these comments and changes in the Analysis of Comments and Changes section published as an appendix to this notice.

Note: This NFP does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. A notice inviting applications for FY 2003 awards was published in the **Federal Register** on May 29,

2003 (68 FR 32026). When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) Awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Background

The background statements for the following priorities were published in the NPPs on May 9, 2003.

Priorities

Priority 1—Research Projects

The Assistant Secretary will fund one or more DRRPs that will focus on stabilizing and improving lives of persons with disabilities. In carrying out the purposes of this priority, projects awarded under each of the following topics must, in consultation with the NIDRR project officer:

- Coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training and research methodologies, and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Involve, as appropriate, individuals with disabilities or their family members, or both, in all aspects of the research as well as in the design of clinical services and dissemination activities;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities; and
- Disseminate findings to appropriate audiences, including information on best practices, where applicable.

An applicant must propose research activities and dissemination of findings under one of the following topics:

(a) *Self-Determination in Transition to Adulthood for Youth with Disabilities:* Under this topic, a project must conduct research and disseminate information about factors that enhance and promote self-determination for youth with disabilities who are transitioning into adulthood. The project may include research on interventions that (1) enable successful transition to life activities such as independent living, higher education, and employment; and (2) improve functional outcomes such as enhanced memory, learning, visual perception, auditory reception, literacy, and self-advocacy. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Transition from School to Work.

(b) *Examining Violence Against People With Disabilities:* Under this topic, a project must conduct research and disseminate information on violence against persons with disabilities. Activities may include research on statistics related to criminal victimization of people with disabilities compiled under the 1998 Crime Victims with Disabilities Awareness Act (Pub. L. 301–105); study of data from enhanced crime incident reports; and analysis of data and research findings on the impact of violence on specific populations such as, but not limited to, individuals with cognitive or intellectual disabilities, women with disabilities, individuals with sensory disabilities, and individuals with mobility disabilities. The reference for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

(c) *Family and Cultural Aspects of Independent Living:* Under this topic, a project must conduct research and disseminate information on how individuals with disabilities draw upon their families (or those with whom they share living arrangements) to obtain necessary supports such as economic assistance, informal and formal care giving, and emotional nurturing. Activities may include: (1) Identifying factors that help or hinder NFI goals regarding educational attainment, home ownership, and full access in community life; (2) research on ways that family and shared-community living arrangements may facilitate independence and help implement the Supreme Court's *Olmstead* v. *L.C.* ruling; and (3) research on how family and shared-community living arrangements may facilitate meeting the objectives for people with disabilities in Healthy People 2010. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Disability, Employment, and Independent Living, and chapter 6, Research on Social Roles.

(d) *Older Women and Falls:* Under this topic, a project must identify and compare outcomes-oriented rehabilitation interventions for older women to overcome the disabilities and secondary conditions associated with falls and to prevent secondary falls and other complications. The project must examine risk factors for falls (*e.g.*, age, disability, medications use, health, functional ability, environmental hazards). The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability, and chapter 4, Health and Function: Research on Trauma Rehabilitation; Research on Aging.

(e) *Issues in Asset Accumulation and Tax Policy for People with Disabilities:* Under this topic, a project must conduct research on fiscal and social environmental barriers to economic empowerment and self-sufficiency for people with disabilities and the impact of legislation designed to promote economic self-sufficiency and facilitate community integration. The project must conduct systematic analysis of the relationship between tax policy and asset accumulation for individuals with disabilities and improved economic and community integration outcomes. This includes testing the impact of asset accumulation on economic improvements and community integration for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

(f) *Identifying Opportunities and Barriers to Entrepreneurship for People with Disabilities:* Under this topic, a project must conduct research on ways to improve employment outcomes of individuals with disabilities through self-employment and entrepreneurial strategies and how to train both people with disabilities and counselors in successful use of these strategies. The research must include analysis of the effects of policies and practices of the vocational rehabilitation system; related programs such as those of the Small Business Administration; and other public, private, or nonprofit employment organizations on self-employment options for individuals with disabilities. The reference for this topic can be found in the Plan, chapter

3, Employment Outcomes: Economic Policy and Labor Market Trends.

Priority 2—Research Infrastructure Capacity Building

The Assistant Secretary will fund one DRRP that will focus on a research, development, and dissemination project on Research Infrastructure Capacity Building. The reference for this topic can be found in the Plan, chapter 9, Capacity Building: Priorities in Capacity Building. In carrying out this priority the DRRP must:

(1) Develop and evaluate an innovative method(s) for establishing long-term collaborative research partnerships, with an emphasis on relationships among minority entities, Indian tribes, and nonminority entities;

(2) Research, develop, and evaluate strategies to assess the efficacy of existing research theories, methodologies, and measures for studying and describing underrepresented individuals with disabilities from minority racial and ethnic populations and their needs;

(3) Research, identify and modify or develop, and evaluate scientifically valid measurement strategies and methodologies for research involving the study of underrepresented minority racial and ethnic populations; determine their efficacy; and examine the implications of introducing newly developed approaches designed specifically for the study of this population;

(4) Develop and evaluate research principles or standards for culturally appropriate and linguistically competent disability and rehabilitation research, and disseminate guidelines; and

(5) Develop, implement, and evaluate approaches for disseminating research findings, information about best practices for research involving underrepresented minority racial and ethnic populations, and information about research collaboration.

In carrying out the purposes of the priority, the DRRP must:

- In the first three months of the grant, develop and implement a research partnership plan ensuring that all activities are predominantly focused on research infrastructure capacity building and provide for mutual benefit for each member of the partnership, including persons with disabilities or their representatives;
- In the first year of the grant, implement a plan to disseminate research results;
- In the third year of the grant, conduct a state-of-the-science conference focused on the funded area of research and related topics;
- In the fourth year of the grant, publish and disseminate a comprehensive report on the outcomes and proceedings of the conference;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities; and
- Conduct ongoing program evaluation and produce a closing report describing research outcomes, as they relate to the research goals and objectives, and future directions for research infrastructure development and capacity building.

Priority 3—Resource and Technical Assistance Center on Parenting with a Disability

The Assistant Secretary will fund one DRRP that will focus a dissemination, utilization, training, and technical assistance project to be a ''Resource and Technical Assistance Center on Parenting with a Disability.'' The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Disability, Employment, and Independent Living, and chapter 8, Knowledge Dissemination and Utilization: Overview. The DRRP must:

(1) Develop quality standards to guide the identification of information for dissemination;

(2) Provide information and technical assistance to people with disabilities who are or wish to be parents. A variety of methods and tools will be developed to provide information and technical assistance. Tools might include such items as: catalogues and listings of assistive technology, fact sheets, and articles for publication in various media. Methods to reach interested parties might include: interactive features of the Internet, wide area telephone service, presentations at meetings or conferences and personal visits;

(3) Develop parent-to-parent support methods, including approaches for sharing of information about ''best practices'' in parenting with a disability;

(4) Train parents, potential parents, service providers, and others on issues relating to parenting with a disability and the research, information, and services available to them; and

(5) Evaluate project technical assistance and information dissemination activities.

In carrying out the purposes of the priority, the DRRP must:

- Through consultation with the NIDRR project officer, coordinate and establish partnerships, as appropriate, with other projects sponsored by OSERS, academic institutions, and organizations that are relevant to the project's proposed activities;
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Using information developed from the project's dissemination, training, and technical assistance activities, with emphasis on materials from NIDRR projects, provide materials, consultation, technical assistance, and related capacity-building activities to NIDRR grantees on how to assist parents with disabilities.

Priority 4—Development Projects

The Assistant Secretary will fund one or more DRRPs that will focus on stabilizing and improving lives of persons with disabilities. In carrying out the purposes of the priority, projects awarded under each of the following topics, in consultation with the NIDRR project officer, must:

- Coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training, and development methodologies and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Involve, as appropriate, individuals with disabilities or their family members, or both, in all aspects of development as well as in the design of clinical services and dissemination activities;
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Disseminate findings on products and technologies to appropriate audiences, including information on best practices, where applicable.

An applicant must propose development activities and dissemination of findings under one of the following topics:

(a) *Voting Access and Privacy.* Under this topic, a project must develop technologies, strategies, and approaches that can be used to improve and expand access, including physical accessibility,

to voting accurately, independently, and privately for all citizens with disabilities. Voting is a citizen's most basic right. Yet many individuals with disabilities find it difficult, if not impossible, to vote without a poll worker's or another individual's assistance. Development products may address, but are not limited to, voting apparatus, accommodations information, training materials (*i.e.*, books, guidelines, electronic materials) for public elections officials and citizens, and cost analysis and evaluation of products and technologies to enhance voting access for citizens with disabilities. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Research to Improve Accessibility of Telecommunications and Information Technology.

(b) *Technologies for Families and Caregivers.* Under this topic, a project must develop technologies, strategies, and approaches that will facilitate and improve the continuum of activities and reduce the demands involved in care giving for individuals with disabilities. The upsurge of programs such as ''Long-Term Care'' and ''Home-Health Care'' has stimulated the need for tools and strategies that enable individuals with disabilities to live longer and more productively in their communities. New and improved technologies for care giving will help implement the Supreme Court's *Olmstead* v. *L.C.* decision. Development products may address, but are not limited to, evaluation and assessment of existing technology solutions, accommodations information, training materials (*i.e.*, books, guidelines, electronic materials) for public officials and citizens, and cost analysis and evaluation of products and technologies to enhance community integration, personal assistance services, and independent living for citizens with disabilities. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Assistive Technology for Individuals.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the priorities justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with these priorities are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the DRRP Program have been well established over the years in that similar projects have been successfully completed. These final priorities will generate new knowledge through research to focus on stabilizing and improving lives of persons with disabilities.

The benefit of these final priorities and project requirements will be the establishment of new DRRP projects that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: July 22, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

General

Comment: Several commenters raised concerns that NIDRR did not publish a priority that specifically targeted Native Americans.

Discussion: The priority on Research Infrastructure Capacity Building includes Native Americans as a proposed target group. Nothing in the other published priorities precludes applicants from proposing Native Americans as the target population for the proposed research. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: One commenter expressed several concerns about references to racial, ethnic, and linguistic minority populations in the NIDRR priorities. These concerns included: (1) NIDRR's use of a standard statement about inclusion of minorities in research activities; (2) combining ethnic categories into one proposed priority is inappropriate; (3) NIDRR does not ensure that applicants demonstrate ''who, what, when, and where'' in addressing the needs of individuals with disabilities from minority backgrounds; and (4) the American Indian and Alaska Native populations are a culturally and linguistically diverse population. Commenters also noted that many caregivers do not speak, write, or read the English language, and they questioned whether it was likely that potential grantees would deal with caregivers who do not speak, write, or read the English language or would address minority backgrounds including American Indians and Alaska Natives with disabilities.

Discussion: (1) The standard statement that each NIDRR applicant must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds is required by 34 CFR 350.40(a), and as a result, cannot be changed by this priority. (2) Nothing in these priorities precludes an applicant from focusing on any racial, ethnic, or minority population, including American Indians and Alaska Natives. (3) In section 350.40(b), NIDRR lists some of the approaches applicants may take to meet the requirement in § 350.40(a), including, for example, addressing a problem that is of particular significance to individuals with disabilities from minority backgrounds and generating information pertinent to individuals with disabilities from minority backgrounds. (4) In the background section to these priorities, language barriers and lack of understanding about cultural values and beliefs are identified as challenges to the effectiveness of rehabilitation services received by individual with disabilities form minority backgrounds. An applicant may choose to include linguistic or cultural issues in the proposed research activities. However, NIDRR has no basis for requiring that all applicants adopt the same approach or

address the same issue. The peer review process will evaluate the merits of the proposal.

Changes: None.

Violence:

Comment: One commenter expressed an opinion that focusing on analysis of ''extant data from crime reports'' might unnecessarily limit the scope of research in the proposed DRRP priority on violence.

Discussion: NIDRR agrees that it might be valuable to collect new data to answer research questions in this area. Nothing in the priority precludes an applicant from suggesting such an approach. However, NIDRR has no basis for requiring all applicants to collect new data. The peer review process will evaluate the merits of the proposal.

Changes: None.

Technical Assistance Resource Center

Comment: One commenter suggested that the Technical Assistance Resource Center provide information on coordinated services for parents who are deaf or hard of hearing.

Discussion: NIDRR agrees that this might be a useful service. Nothing in the priority prohibits an applicant from suggesting this approach. However, NIDRR has no basis for requiring that all applicants take this approach. The peer review process will evaluate the merits of the proposal.

Changes: None.

Research Methods for Underserved Populations

Comment: One commenter expressed concern that Native Americans and Alaska Natives are listed with other minority population categories as a potential focus of this priority and recommended that the priority should specify the target population so that researchers studying different ethnic populations do not have to compete against each other.

Discussion: NIDRR is committed to improving research methods for studying all minority and ethnic populations. Nothing in the priority precludes an applicant from targeting a specific population. The peer review process will evaluate the merits of the proposal.

Changes: None.

[FR Doc. 03–19015 Filed 7–24–03; 8:45 am]

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DEPARTMENT OF EDUCATION

[RIN 1820 ZA18]

National Institute on Disability and Rehabilitation Research (NIDRR)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services (OSERS) announces final priorities for a Disability Demographics and Statistics Center, Community Integration Outcomes Centers, and Health and Function Centers under the Rehabilitation Research and Training Centers (RRTC) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year (FY) 2003 and later years. We take these actions to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities are effective August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Rehabilitation Research and Training Centers

We may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. Each RRTC must be operated by or in collaboration with an institution of higher education or providers of rehabilitation or other appropriate services. RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/officers/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties; and
- Involve individuals with disabilities and individuals from minority backgrounds as participants in research as well as training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The final priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these final priorities, a specific reference is included for the topics presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of

knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

We published a separate notice of each proposed priority (NPPs) in the **Federal Register** on May 9, 2003.

Priority 1—Disability Demographics and Statistics Center (84.133B–1) (68 FR 25004).

Priority 2—Community Integration Outcomes Centers (84.133B–5) (68 FR 25019).

Priority 3—Health and Function Centers (84.133B–7) (68 FR 25011).

We have combined these three priorities in this notice of final priorities (NFP).

Analysis of Comments and Changes

In response to our invitation in the NPPs, we received 269 comments.

We discuss these comments and changes in the Analysis of Comments and Changes section published as an appendix to this notice.

There are no significant differences between the NPPs and this NFP.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, we will do so through a notice in the **Federal Register**. A notice inviting applications for FY 2003 awards was published in the **Federal Register** on May 29, 2003 (68 FR 32023). When inviting applications we designate these priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Background

The background statements for the following priorities were published in the NPPs on May 9, 2003.

Priorities

Priority 1—Disability Demographics And Statistics Center

The Assistant Secretary will fund one RRTC on disability demographics and statistics. The purpose of this RRTC is to support rigorous collaborative research to generate new knowledge that advances evidence-based decision making to improve the lives of persons with disabilities. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Age, Gender, Education, Income, and Geography; chapter 7, Associated Disability Areas: Disabilty Statistics. The RRTC must:

(1) Conduct analyses using a variety of data sources, including those that assess facilitators and barriers to participation in society, to address the status and understanding of the population of individuals with disabilities;

(2) Identify, develop as necessary, and validate a series of best-practice approaches that facilitate the selection of appropriate measures, ensure a high degree of power and representativeness of the sample, and apply techniques of interviewing and data collection that lead to high levels of quality and relevance of information while minimizing the burden on respondents;

(3) Identify, develop as necessary, and evaluate instruments, data sources, administrative records, or other sources that allow Federal policymakers to use the International Classification of Functioning, Disability, and Health (ICF) classification system for evidence-based decisionmaking;

(4) Serve as a resource on disability statistics and demographics for Federal and other government agencies, policymakers, consumers, advocates, researchers, and others; and

(5) Develop quality standards to guide the identification of information for dissemination and conduct all activities to prepare, produce, and disseminate findings in a variety of media, such as web-based and print documents, meetings and conferences, and teleconferences that are targeted to the wide range of audiences who need such information.

In addition to the activities proposed by the applicant to carry out these purposes, the RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the center;
- Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Demonstrate how the RRTC project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Priority 2—Community Integration Outcomes Centers

The Assistant Secretary will fund up to four RRTCs that will focus on improving the community integration outcomes of persons with disabilities. Each RRTC must:

(1) Identify, develop, and evaluate rehabilitation techniques to address its respective area of research and improve outcomes for its designated population group;

(2) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, consumers and their family members, practitioners, service providers, researchers, policymakers, and the community;

(3) Provide technical assistance to critical stakeholders, as appropriate, *e.g.*, consumers and their family members, practitioners, service providers, and the community, to facilitate utilization of research findings in its respective area of research; and

(4) Develop a systematic plan for widespread dissemination of

informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle;
- Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;
- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Demonstrate how the project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Each RRTC must focus on one of the following priorities.

(a) *Community Integration for Individuals with Intellectual and Developmental Disabilities (I/DD):* This Center must conduct qualitative and quantitative research, including the development and implementation of outcome measures, on factors that assist and hinder community integration, self-determination, training, employment, and independent living for persons with I/DD. The references for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(b) *Promoting Healthy Aging and Community Inclusion Among Adults with Intellectual and Developmental Disabilities (I/DD):* This Center must conduct epidemiological and community-based research, training, and dissemination activities regarding factors, such as aging, healthcare utilization, and caregiver characteristics, that assist and hinder community integration for adults with I/DD. The references for this topic can be found in the Plan, chapter 4, Health and Function: Research on Aging with a Disability; and chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(c) *Positive Behavioral Support in Community Settings:* This Center must conduct research, training, and dissemination activities on positive behavioral support interventions that assist and sustain community integration efforts for a broad range of individuals with disabilities, including people with mental illness, over time and across systems. Dissemination and training efforts must target community partners, *e.g.*, employers, teachers and coaches, and landlords, as well as individuals with disabilities and their families. The reference for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Research on Increasing Personal Development and Adaptation.

(d) *Policies Affecting Families of Children with Disabilities:* This Center must research and disseminate information on the effects of government, system, network, and agency policies on community integration and quality of life for families who have children with disabilities. The Center also must validate instruments to measure these effects and provide technical assistance, with the goal of improving community integration and quality of life, by: (1) enhancing and coordinating policies among systems and (2) informing and empowering family and peer-based networks and partnerships. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Employment and Independent Living; and chapter 6, Research on Social Roles.

(e) *Community Integration for People with Psychiatric Disabilities:* This Center must research, disseminate, and provide training on factors, policies, and interventions, such as peer-support models and other innovative treatment approaches, that assist community integration for people with psychiatric disabilities. The target population may include individuals from any age group. The references for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(f) *Substance Abuse:* This Center must conduct research, disseminate information, and provide training on community-based interventions, partnerships, and service delivery models that improve community integration outcomes for people with disabilities who are recovering from substance abuse problems. The target population may or may not include individuals with co-occurring disorders such as mental illness. The reference for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

Priority 3—Health and Function

The Assistant Secretary will fund up to seven RRTCs that will focus on rehabilitation to improve the health and function of persons with disabilities and thus to improve their ability to live in the community. Each RRTC must:

(1) Identify, develop, and evaluate rehabilitation techniques to address its respective area of research and improve outcomes for its designated population group;

(2) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, consumers/family members, practitioners, service providers, researchers, and policymakers;

(3) Provide technical assistance, as appropriate, to critical stakeholders, (*e.g.*, consumers/family members, practitioners, and service providers) to facilitate utilization of research findings in its respective area of research; and

(4) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must:

- Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the center;
- Coordinate on research projects of mutual interest with relevant NIDRR-

funded projects as identified through consultation with the NIDRR project officer;

- Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;
- Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds; and
- Demonstrate how the RRTC project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Each RRTC must focus on one of the following priority topic areas:

(a) *Psycho-social Factors Affecting Individuals Aging with Disability:* This Center must conduct research and training activities that generate new knowledge regarding the psycho-social issues that affect individuals aging with disabilities and the sources of resilience used by this population to cope with or respond to these issues. In an effort to improve long-term outcomes for these individuals, the Center is encouraged to identify or develop and test the effectiveness of interventions that will prevent or minimize the impact of psycho-social issues on the health, activity, and community participation of individuals with disabilities across the life span and promote positive adjustment and improved quality of life. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Aging with a Disability.

(b) *Secondary Conditions in Rehabilitation of Individuals with Spinal Cord Injury (SCI):* In an effort to improve the general health, well-being, and community integration of individuals with SCI, this Center must conduct research and training activities to enhance knowledge regarding either treatment or prevention strategies, or both, that addresses the wide array of secondary conditions associated with SCI, including, but not limited to, respiratory complications, urinary tract infections, pressure ulcers, pain, obesity, and depression. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Secondary Conditions.

(c) *Community Integration of Individuals With Traumatic Brain Injury (TBI):* This Center must identify, assess, and evaluate current and emerging community integration needs of individuals with TBI, including but not limited to mild TBI. The Center should consider the impact of secondary conditions on community integration outcomes as well as the role of assistive devices and other technology. In addition, this Center must develop and evaluate a comprehensive plan to facilitate the translation of new knowledge into rehabilitation practice and the delivery of community-based services. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Trauma Rehabilitation.

(d) *Rehabilitation of Individuals with Neuromuscular Diseases:* This Center must conduct research that addresses rehabilitation needs, particularly related to exercise, nutrition, and pain, of individuals with neuromuscular diseases. In doing this, the Center must identify or develop and evaluate health promotion and wellness programs to enhance recreational opportunities for individuals with neuromuscular diseases. This Center must identify, develop as appropriate, and evaluate devices and other technology that improve employment and community integration outcomes for this population of individuals with disabilities. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

(e) *Rehabilitation of Stroke Survivors:* This Center must conduct research to develop rehabilitation interventions that improve rehabilitation, employment, and community integration outcomes of stroke survivors, including young stroke survivors. Such interventions may include robotics, complementary alternative therapies, and universal design methodologies aimed at improving the utility of workplace tools and devices. This Center must explore the cost-effectiveness of stroke rehabilitation treatments, such as group model approaches. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Trauma Rehabilitation.

(f) *Rehabilitation of Individuals with Arthritis:* This Center must address national goals to reduce pain and disability, improve physical fitness and quality of life, and promote independent living and community integration for persons with arthritis of all ages in the United States. This Center must research the benefits of exercise and physical fitness; home and community-based self-management programs; and technologies available to the broad populations of persons with arthritis in the environments where they live, learn, work, and play. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

(g) *Rehabilitation of Children with Traumatic Brain Injury (TBI):* This Center must identify, assess, and evaluate current and emerging rehabilitation needs for children and adolescents with TBI. In doing this, the Center must document patterns of recovery, determining the effectiveness of current outcome measures for this population. Of particular interest will be evaluation of interventions and technologies, including specialized support services, to assist families and caregivers with transition to the school and the community. This RRTC must identify or develop effective rehabilitation strategies to improve outcomes for children and adolescents with TBI at all stages of rehabilitation. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Trauma Rehabilitation.

(h) *Rehabilitation of Individuals with Multiple Sclerosis (MS):* This Center must conduct research to maximize the participation of people with MS, including those with all levels of symptoms associated with the disease, at home, in the community, and while working or learning. In doing so, the Center must identify, develop as necessary, and evaluate interventions to enhance the independence of people with MS. Those interventions must include strategies and programs that address interactions among cognitive, psychosocial, sensory, mobility, and other manifestations of the disease across the lifespan. The Center must consider the role of assistive and universally designed technologies, strategic goals, and financial planning for persons with MS, and the role of caregivers throughout the disease course. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we

have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priorities justify the costs.

Summary of Potential Costs and Benefits

The potential cost associated with these final priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the RRTC program have been well established over the years given that similar projects have been successfully completed. These final priorities will generate new knowledge through research, dissemination, utilization, training, and technical assistance projects.

The benefit of these final priorities and proposed applications and project requirements will be the establishment of new RRTCs that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: July 22, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

General

Comment: Several commenters raised concerns about the failure of the priorities to require a focus on the Native American population, citing the high rates of disability within this population.

Discussion: Nothing in the priorities precludes an applicant from focusing on the needs of Native Americans. The peer review process will evaluate the merits of the proposal.

Changes: None.

Disability Demographics and Statistics Center

Comment: One commenter expressed concern that the Disability Demographics and Statistics Center priority does not specifically target analyses focused on the status of individuals who are American Indian or Alaskan Native.

Discussion: Nothing in the priority precludes an applicant from including these populations in proposed research. However, NIDRR has no basis for requiring that all applicants focus on these populations in responding to these priorities. The peer review process will evaluate the merits of the proposal.

Changes: None.

Community Integration

General

Comment: Several commenters suggested that NIDRR increase the number of funded centers under these competitions.

Discussion: The proposed number of funded centers is not part of the proposed priorities and is not subject to comment.

Changes: None.

Comment: Several commenters expressed concern about NIDRR's plan to publish the Notice Inviting Application (NIA) prior to the end of the comment period, effectively shortening the time from publication of the proposed priority to the due date for the applications.

Discussion: NIDRR announced in the NIA that, if it received comments that resulted in changes to the priorities, an extension would be granted to allow for more time to respond in light of such changes. NIDRR believes that a period of 60 days from the date of the NIA to the due date of the proposal is adequate time to prepare a proposal in response to the priorities.

Changes: None.

Comment: Many commenters expressed concern that NIDRR was ''forcing different disability groups'' to compete against each other for funds.

Discussion: The proposed grouping of NIDRR competitions is not part of the proposed priorities and is not subject to comment. However, NIDRR offers the following observation. NIDRR has previously conducted successful competitions in which it listed more topics than it could fund. This approach will provide NIDRR with peer review input to guide decisions about funding worthy topics. This grouping is intended to foster competition to improve research outcomes and have a positive impact on the lives of individuals with disabilities.

Changes: None.

Comment: Many commenters expressed concern that NIDRR's priorities do not provide sufficient opportunities for applicants that are concerned with psychiatric disability.

Discussion: The announcement includes a proposed new priority topic on the Community Integration of Individuals with Psychiatric Disabilities. In addition to this opportunity, NIDRR's commitment to the area of psychiatric disability is demonstrated by its current funding of five RRTCs on issues of psychiatric disability and mental health. In addition, NIDRR funds a number of field-initiated projects that focus on this topic as well as an advanced research training project and a Disability Rehabilitation Research Project (DRRP) on mental health service delivery. NIDRR's commitment to this critical area has not changed, and NIDRR is committed to supporting future initiatives in this area.

Changes: None.

Comment: One commenter suggested that the definition of ''critical stakeholders,'' in the list of requirements for each RRTC, be revised to include the word ''community''—and noted that the realization of true community integration must include the community itself.

Discussion: NIDRR agrees that community members are critical components of community integration for individuals with disabilities and that they should be included in training and technical assistance efforts.

Changes: The priority has been changed to reflect this addition.

Comment: One commenter suggested that programs measuring Presidential, Congressional, and Judicial objectives regarding community inclusion be included in RRTC activities, by means of national and state data collection activities.

Discussion: NIDRR agrees that data collection to assist the measurement of community inclusion-related national objectives would be worthwhile, and applicants may submit applications in this area. However, NIDRR has no basis for requiring applicants to focus on this issue. The peer review process will evaluate the merits of the proposal.

Changes: None.

Psychiatric Disability

Comment: One commenter expressed concern that the description of the proposed RRTC on Community Integration for People with Psychiatric Disabilities is not age-specific but instead indicates that, ''the target population may include individuals from any age group.'' The commenter noted that children and adults, while having some overlapping areas, also have distinct age-specific needs.

Discussion: NIDRR agrees that children and adults have many distinct age-specific needs. The language in the proposed priority was

not a suggestion (or requirement) that the applicant address issues of both. Rather, it was intended to allow flexibility for applicants in selecting their target populations. The peer review process will evaluate the merits of the proposal.

Changes: None.

Substance Abuse

Comment: Several commenters urged NIDRR to co-fund research activities with the Substance Abuse and Mental Health Services Administration (SMHSA), National Institute on Alcohol Abuse and Alcoholism (NIAAA), and National Institute on Drug Abuse (NIDA) in the area of substance abuse and co-existing disabilities.

Discussion: While co-funding of research in the area of substance abuse may have merit, this is not a subject for comment relative to the priority.

Changes: None.

Comment: Many commenters suggested that the unique needs of persons with disabilities who have co-occurring substance abuse disorders be addressed exclusively.

Discussion: The priority is clear that the target population is people with disabilities who are recovering from substance abuse problems. The priority also states that the applicants may or may not focus on individuals with co-occuring disorders such as mental illness. However, NIDDR has no basis to determine that all applicants should be required to focus on the unique needs of persons with disabilities who have co-occurring disorders such as mental illness. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: Several commenters encouraged substance abuse research that is policy oriented at Federal and State levels.

Discussion: Nothing in the priority precludes an applicant from focusing on policy issues at the Federal and State level. However, NIDRR has no basis to determine that all applicants should be required to focus on policy issues. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: One commenter suggested that the substance abuse priority require research on approaches for modifying treatment modalities to support the integration of patients with co-existing disabilities into community-based treatment programs rather than emphasize specialized programs. The commenter further suggested that the priority focus on employment outcomes, including retention.

Discussion: The priority does not preclude research focusing on either treatment modalities or employment outcomes for persons with disabilities who have substance abuse disorders. However, NIDRR has no basis to require that all applicants focus on these topics. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: Two commenters suggested the priority require research in cross-training of program staff and community-based staff involved in providing services to individuals with disabilities who have substance abuse problems.

Discussion: The priority requires an applicant to provide training that improves community-integration outcomes for person with disabilities who are recovering from substance abuse problems. The applicant has the discretion to identify the specific target populations to be trained and the manner in which they will be trained. However, NIDRR has no basis to require all applicants to conduct cross-training of staff. The peer review process will evaluate the merits of the proposal.

Changes: None.

Health and Function

General

Comment: One commenter expressed concern that the Health and Function priorities do not specifically target the health needs of individuals with disabilities who are American Indian or Alaskan Native.

Discussion: NIDRR is aware of the critical health care issues facing American Indians and Alaskan Natives with disabilities. Nothing in the priority precludes an applicant from including these populations in proposed research. However, NIDRR has no basis for requiring that all applicants focus on these populations in responding to these priorities. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: One commenter suggested adding Parkinson's Disease to the list of possible RRTC topics or expanding the neuromuscular disease priority to include Parkinson's Disease.

Discussion: Parkinson's Disease is often categorized as a neuromuscular disease. Nothing in the priority precludes an applicant from proposing Parkinson's Disease as a topic under the neuromuscular disease category. The peer review process will evaluate the merits of the proposal.

Changes: None.

[FR Doc. 03–19018 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–24: High Energy Physics Outstanding Junior Investigator Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Outstanding Junior Investigator (OJI) Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical high energy physics or accelerator physics research, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of individual research programs by outstanding scientists early in their careers. Awards made under this program will help to maintain the vitality of university research and assure continued excellence in the teaching of physics.

DATES: To permit timely consideration for award in Fiscal Year 2004, formal applications submitted in response to this notice should be received before November 4, 2003.

ADDRESSES: Applications for OJI Awards referencing Program Notice DE–FG01–03ER03–24 must be submitted electronically by an authorized institutional business official through the DOE Industry Interactive Procurement System (IIPS) Web site at: *http://pr.doe.gov* (*see also http://www.sc.doe.gov/production/grants/grants.html*). IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. IIPS offers the option of submitting multiple files—please limit submissions to only one file within the volume if possible, with a maximum of no more than four files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Mandula, Office of High Energy Physics, SC–221/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585–1290. Telephone: (301) 903–4829. E-mail: *jeffrey.mandula@science.doe.gov.*

SUPPLEMENTARY INFORMATION: The Outstanding Junior Investigator program was started in 1978 by the Department of Energy's Office of Science. A

principal goal of this program is to identify exceptionally talented high energy physicists early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is therefore restricted to non-tenured investigators who are conducting experimental or theoretical high energy physics or accelerator physics research. Since its debut, the program has initiated support for between five and ten new OJIs each year. The program has been very successful and contributes importantly to the vigor of the U.S. High Energy Physics program. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. The full range of activities currently supported by the Division of High Energy Physics is eligible for support under this program.

The DOE expects to make five to ten grant awards in Fiscal Year 2004, to meet the objectives of this program. It is anticipated that approximately $500,000 will be available in Fiscal Year 2004, subject to availability of appropriated funds. In the recent past, awards have averaged $60,000 per year, with the number of awards determined by the number of excellent applications and the total funds available for this program. Multiple-year funding of grant awards is expected, including renewal beyond the initial project period, as long as the recipient's tenure status is unchanged. Funding will be provided on an annual basis subject to availability of funds. Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR 605.10(d):

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of applicant's personnel and adequacy of proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on July 17, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–18979 Filed 7–24–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that this meeting be announced in the **Federal Register** to allow for public participation. This notice announces the eighth meeting of FEMAC, an advisory committee established under Executive Order 13123—''Greening the Government through Efficient Energy Management.'' FEMAC provides public and private sector input to the Secretary of Energy on achieving mandated energy efficiency goals for Federal facilities. The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of the Federal Energy Management Program, coordinates FEMAC activities.

DATES: Tuesday, August 19, 2003; 4 p.m. to 5:30 p.m.

ADDRESSES: Wyndham Palace Resort and Spa, 1900 Buena Vista Drive, Lake Buena Vista, Florida 32830–2206. The FEMAC meeting will be held in the Wyndham's Cloister Room (lobby level).

FOR FURTHER INFORMATION CONTACT: Steven Huff, Designated Federal Officer for the Committee, Office of the Federal Energy Management Program, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3507.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: This FEMAC meeting is an open forum for communicating with FEMAC members and Federal Energy Management Program officials.

Tentative Agenda: Agenda will include an open discussion on the following topics:

- Implementation of Executive Order 13123
- Innovative Financing Mechanisms (Energy Saving Performance Contracts and Utility Energy Service Contracts)
- Incorporating New Technologies, Products, and Services in Federal Facilities
- Sustainable Design in Federal Facilities
- Training and Technical Assistance
- Other Energy Management Issues and Topics
- Barriers and Opportunities
- Public Comment

Public Participation: For this discussion session, FEMAC invites members of the public to help identify possible solutions in achieving the goals of reducing energy use and increasing energy efficiency in Federal facilities. No advance registration is required for the meeting. Those wishing to address the committee will be heard based on a ''first-come, first-served'' sign-up list for the session. With the limited time available, the committee also encourages written recommendations, suggestions, position papers, etc., combined with a short oral summary statement.

Documents may be submitted either before or after the meeting. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of the meeting.

If you would like to file a written statement with the committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the agenda topics, you should contact Steven Huff at (202) 586–3507 or by e-mail to *steven.huff@ee.doe.gov*.

Members of the FEMAC are: Stuart Berjansky, Advance Transformer Company; Jared Blum, Polyisocyanurate Insulation Manufacturers Association; Robert Collins, Jr., Tampa Electric Company; Richard Earl, PB Facilities, Inc., Parsons Brinckerhoff Company; Terrel Emmons, Office of the Architect of the Capitol; Richard Hays, City of San Diego; Brian Henderson, New York State Energy Research and Development Authority; Erbin Keith, Sempra Energy Solutions, LLC; Vivian Loftness, Carnegie Mellon University; Anne Marie McShea, The Center for Resource Solutions; Get Moy, Office of the Deputy Under Secretary of Defense; Mary Palomino, Salt River Project; James Rispoli, U.S. Department of Energy; Mitchell Rosen, Liberty Total Comfort

Systems; and Cynthia Vallina, Office of Management and Budget. Mr. Henderson is the FEMAC chair.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 21, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–18978 Filed 7–24–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2180]

PCA Hydro, Inc.; Notice of Authorization for Continued Project Operation

July 21, 2003.

On June 26, 2001, PCA Hydro, Inc., licensee for the Grandmother Falls Project No. 2180, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2180 is located on the Wisconsin River in Lincoln County, Wisconsin.

The license for Project No. 2180 was issued for a period ending June 30, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2180 is issued to PCA Hydro, Inc. for a period effective July 1, 2003 through June 30, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PCA Hydro, Inc. is authorized to continue operation of the Grandmother Falls Project No. 2180 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19037 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–400–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fourth Revised Sheet No. 272, effective July 1, 2003.

Midwestern states that the purpose of this filing is to comply with the Commission's uncited letter order at docket RP03–400–000 dated June 20, 2003, wherein the Commission directed Midwestern to revise its tariff to reflect that NAESB WGQ Standards 5.3.7, 5.3.41, 5.3.42, 5.3.46, and 5.3.48 refer to Recommendation R02002 and NAESB WGQ Data Sets 1.4.4, 5.4.1, 5.4.3, 5.4.4, 5.4.7, and 5.4.9 refer to both Version 1.6 of the NAESB WGQ Standards and Recommendation R02002. This filing also incorporates by reference NAESB WGQ Standard 2.3.29, which was not included in the initial filing in this proceeding.

Midwestern states that copies of this filing have been sent to all of Midwestern 's contracted shippers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18942 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–370–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in its filing, with an effective date of July 1, 2003.

National Fuel states that the purpose of this filing is to submit revised tariff sheets in compliance with the Commission letter order issued on June 20, 2003, in Docket No. RP03–370–000 and to conform to the WGQ Standards incorporated by Order No. 587–R,

Standards for Business Practices of Interstate Natural Gas Pipelines.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18940 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–088]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 2, 2003.

Take notice that on June 30, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets listed on Appendix A to the filing, to be effective July 1, 2003.

Natural states that the purpose of this filing is to implement a new negotiated rate transaction entered into by Natural and Wisconsin Electric Power Company under Natural's Rate Schedule FTS, pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention and Protest Date: July 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18947 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–350–001]

Northern Natural Gas Company; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 30, 2003, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Tenth Revised Sheet No. 204, with an effective date of July 1, 2003.

Northern states that the filing is being made in compliance with the Director's order dated June 18, 2003 in Docket No. RP03–350–000 regarding compliance with Order No. 587–R.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18939 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–416–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 254; Fifth Revised Sheet No. 255; Fifth Revised Sheet No. 256; and Fourth Revised Sheet No. 257, to be effective July 28, 2003.

Northwest states that this filing complies with the Commission's order dated June 9, 2003 in Docket No. RP01–416–000 by revising a conditionally accepted tariff provision to also provide a mechanism for sharing the costs of

laterals when a shipper has elected the lump sum payment method.

Northwest states that a copy of this filing has been served upon each person designated on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18938 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–449–001]

Panhandle Eastern Pipe Line Company, LLC; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 30, 2003, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendices A and B to the filing. The revised tariff sheets are proposed to be effective on June 23, 2003, and July 1, 2003, respectively.

Panhandle states that this filing is being made to comply with the Commission's Letter Order dated June 19, 2003, in Docket No. RP03–449–000.

Panhandle states that copies of this filing are being served on all affected shippers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18944 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–046]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

July 2, 2003.

Take notice that on June 30, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1A, Fifteenth Revised Sheet No. 15 and First Revised Sheet No. 21B, to be effective July 1, 2003.

GTN states that these sheets are being filed to reflect the implementation of one new negotiated rate agreement and the removal of one negotiated rate agreement that has expired.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention and Protest Date: July 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18948 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–323–000, et al.]

Pinnacle Pipeline Company; Notice of Application

July 2, 2003.

Take notice that on June 19, 2003, Pinnacle Pipeline Company (Pinnacle), 5100 Westheimer, Suite 320, Houston, Texas 77056, filed in Docket Nos. CP03–323–000, CP03–324–000 and CP03–325–000 an application pursuant to Section 7(c) of the Natural Gas Act and Parts 284 and 157 of the Commission's Regulations for a certificate of public convenience and necessity to continue operating the Hobbs Lateral, an existing pipeline facility located in the State of New Mexico; provide open-access firm and interruptible transportation services; engage in certain routine

activities; and expand the Hobbs Lateral through the addition of looping facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Pinnacle states that the Hobbs Lateral is an existing 5-mile, 10-inch diameter high pressure lateral pipeline located in Lea County, New Mexico. Pinnacle further states that the requested authorization will allow Pinnacle to continue to serve the existing and expanded combustion turbine needs of two electric power plants that are owned and operated by Southwestern Public Service Company (SPS), the only customer served by the Hobbs Lateral. Pinnacle states that the proposed expansion will consist of 2.4 miles of 12-inch diameter pipeline with two 12-inch mainline block valve assemblies at each end of the pipeline loop. Pinnacle estimates the cost of facilities to be $531,000.

Any questions regarding this application should be directed to William G. Janacek, Pinnacle Pipeline Company, 5100 Westheimer, Suite 320, Houston, Texas 77056–5511, at (713) 965–9151, fax (713) 965–9156.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: July 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18934 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–530–000]

Portland Natural Gas Transmission System; Notice of Proposed Change in FERC Gas Tariff

July 2, 2003.

Take notice that on June 27, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 366, to become effective on August 1, 2003.

PNGTS states that the purpose of its filing is to clarify PNGTS's billing procedures in the event that PNGTS, pursuant to an agreement with a shipper, incurs third-party charges to provide service to such shipper. PNGTS states that its proposed tariff provision is similar to third-party billing provisions in other pipeline tariffs.

Specifically, PNGTS is proposing a new subsection 15.8 to the Billings and Payment section of the General Terms and Conditions of its FERC Gas Tariff, which states in pertinent part that ''If Shipper requests, and Transporter agrees, that Transporter shall, to provide service to Shipper, use service which Transporter has contracted for with third party(s) for the benefit of Shipper, Shipper shall pay Transporter an amount equal to the charges Transporter is obligated to pay such third party(s), which charges may include, but are not limited to, reservation and/or usage charges and surcharges, fuel charges, compression fees, balancing or storage fees, measurement fees, processing fees, and/or facility charges.'' Subsection 15.8 also provides that any such third party charges shall be set forth as a separate item on billings rendered to Shipper.

PNGTS also states that copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18945 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–391–002]

Questar Southern Trails Pipeline Company; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 103 and Substitute Second Revised Sheet No. 105, with an effective date of July 1, 2003.

Southern explains that, on May 1, 2003, and May 23, 2003, Southern Trails filed tariff sheets to comply with Order No. 587–R. Order No. 587–R requires interstate pipelines to incorporate Version 1.6 of the consensus standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB). Southern further states that, on June 17, 2003, the Commission issued an order in Docket No. RP03–391–000 and –001 and, with minor exceptions, accepted Southern Trails' tariff sheets to be effective July 1, 2003. The Commission, in the June 17 Order, directed Southern Trails to file revisions to its tariff sheets within ten days of the June 17 Order. Southern states that this filing is tendered to comply with the Commission's June 17 Order.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18941 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–422–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Eighth Revised Sheet No. 203A and Original Sheet No. 203B, to be effective July 1, 2003.

Trailblazer states that the purpose of this filing is to comply with the Commission's letter order issued June 20, 2003, in Docket No. RP03–422 (Order). The Order accepted, subject to specified modifications, tariff sheets filed by Trailblazer in accordance with Order No. 587–R, issued on March 12, 2003, in Docket No. RM96–1–024 (Order 587–R). Trailblazer's original Order 587–R compliance filing was made on May 1, 2003. No tariff changes other than those required by the Order are reflected in this filing.

Trailblazer states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP03–422.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18943 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–531–000]

West Texas Gas, Inc.; Notice of Gas Cost Reconciliation Report

July 2, 2003.

Take notice that on June 26, 2003, West Texas Gas, Inc. (WTG) submitted for filing its annual purchased gas cost reconciliation for the period ending April 30, 2003. Under section 19, any

difference between WTG's actual purchased gas costs and its spot market-based pricing mechanism is refunded or surcharged to its two jurisdictional customers annually, with interest. WTG states that the report indicates that WTG overcollected its actual costs by $19,533 during the reporting period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18946 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1085–006, et al.]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Filings

July 18, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. South Carolina Electric & Gas Company

[Docket No. ER96–1085–006]

Take notice that on July 15, 2003, South Carolina Electric and Gas Company filed its second triennial market power analysis in support of its market pricing authority.

Comment Date: August 5, 2003.

2. MI Energy, LLC

[Docket No. ER03–1076–000]

Take notice that on July 15, 2003, MI Energy, LLC tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 1.

MI Energy states that it has no long-term customers, is not regulated by a state commission, and has no outstanding market-based rate transactions. Therefore, MI Energy states it has not served copies of this filing upon any entity.

Comment Date: August 5, 2003.

3. Virginia Electric and Power Company

[Docket No. ER03–1077–000]

Take notice that on July 15, 2003, Virginia Electric and Power Company, d/b/a Dominion Virginia Power (the Company), filed copies of a letter agreement between Central Virginia Electric Cooperative (CVEC) and the Company. The Company states that the letter agreement, dated June 11, 2003, adds a new delivery point to the March 20, 1967 Contract for the Purchase of Electricity for Resale by Rural Electric Cooperatives, as amended, between CVEC and the Company, First Revised Rate Schedule FERC No. 94. The Company requests waiver of the Commission's notice of filing requirements to allow the letter agreement to become effective on August 1, 2003. The Company states that it will begin service under the new delivery point on or after August 1, 2003.

The Company states that copies of the filing were served upon CVEC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: August 5, 2003.

4. Calpine Newark, LLC

[Docket Nos. QF86–891–005 and EL03–211–000]

Take notice that on July 11, 2003, Calpine Newark, LLC filed with the Federal Energy Regulatory Commission (Commission), a petition for limited waiver of the Commission's operating and efficiency standards for a topping-cycle cogeneration facility.

Comment Date: August 11, 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. 03–18949 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission; Soliciting Additional Study Requests; Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

July 2, 2003.

Take notice that the following hydroelectric license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2183–035.

c. *Date filed:* June 2, 2003.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Markham Ferry Hydroelectric Project.

f. *Location:* On the Grand (Neosho) River, in Mayes County, Oklahoma. This project would not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Robert W. Sullivan, Assistant General Manager, Risk Management & Regulatory Compliance, GRDA, P.O. Box 409, Vinita, Oklahoma 74301; (918)–256–5545.

i. *FERC Contact:* John Ramer, *john.ramer@ferc.gov*, (202) 502–8969.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* August 1, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Markham Ferry Hydroelectric Project consists of the following existing facilities: (1) The 3,744-foot-long by about 90-foot-high Robert S. Kerr dam, which includes an 824-foot-long gated spillway, topped with 17, 40-foot-long by 27-foot-high, steel Taintor gates and two 80-ton capacity traveling gate hoists; (2) the 15-mile-long Lake Hudson, which has a surface area of 10,900 feet, 200,300 acre-feet of operating storage, and 444,500 acre-feet total of flood storage capacity; (3) the 6,200-foot-long by 45-foot-high Salina Dike; (4) a concrete powerhouse containing four 35 horsepower Kaplan turbines with a total maximum hydraulic capacity of 28,000 cubic feet per second (cfs) and four generating units with a total installed generating capacity of 108,000 kilowatts (kW), and producing an average of 257,107,000 kilowatt hours (kWh) annually; (5) one unused 110-kilovolt (kV) transmission line; and (6) appurtenant facilities. The dam and existing project facilities are owned by GRDA.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''FERRIS'' link—select ''Docket #'' and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. With this notice, we are initiating consultation with the Oklahoma State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

r. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in early 2005.

Issue Acceptance or Deficiency Letter: November 2003.

Issue Scoping Document: April 2004.

Notice that application is ready for environmental analysis: August 2004.

Notice of the availability of the EA: February 2005.

Ready for Commission decision on the application: May 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18935 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2720–036]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2720–036.

c. *Date filed:* July 29, 2002.

d. *Applicant:* City of Norway, Michigan.

e. *Name of Project:* Sturgeon Falls Hydroelectric Project.

f. *Location:* On the Menominee River in Dickinson County, Michigan and Marinette County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r)

h. *Applicant Contact:* Ray Anderson, City Manager, City of Norway, City Hall, 915 Main Street, Norway, Michigan 49870, (906) 563–8015.

i. *FERC Contact:* Patti Leppert (202) 502–6034, or *patricia.leppert@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission

relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) A 270-foot-long concrete dam with spillway equipped with a 16.7-foot-high by 24-foot-wide Taintor gate and a 16.7-foot-high by 16-foot-wide Taintor gate; (2) a 126.5-foot-long concrete head-works structure; (3) a 400-acre impoundment with a normal pool elevation of 829.8 feet National Geodetic Vertical Datum; (4) a 300-foot-long, 60-foot-wide power canal; (5) a powerhouse containing four generating units with a total installed capacity of 5,136 kilowatts; (6) a 300-foot-long, 7.2-kV transmission line; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ≥FERRIS≥ link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. Procedural schedule and final amendments: The application should be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments: July 2003.

Request Additional Information, if necessary: August 2003.

Issue Scoping Document 2, if necessary: August 2003.

Notice Ready for Environmental Analysis: September 2003.

Notice of the availability of the EA: January 2004.

Ready for Commission's decision on the application: March 2004.

p. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18936 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 659]

Notice of Intent To File Application for New License

July 2, 2003.

a. *Type of Filing:* Notice of Intent to File Application for a New License.

b. *Project No.:* 659.

c. *Date Filed:* June 18, 2003.

d. *Submitted By:* Crisp County Power Commission—current licensee.

e. *Name of Project:* Lake Blackshear Hydroelectric Project.

f. *Location:* On the Flint River, in Crisp, Dooly, Lee, Sumter, and Worth Counties, Georgia.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Steve Rentfrow, General Manager, Crisp County Power Commission, P.O. Box 1218, Cordelle, GA 31010; 229–273–3811; *srentfrow@crispcountypower.com*.

i. *FERC Contact:* Janet Hutzel at 202–502–8675; *janet.hutzel@ferc.gov*.

j. *Effective Date of Current License:* August 14, 1980.

k. *Expiration Date of Current License:* August 9, 2008.

l. *Description of the Project:* (1) A 415-foot-long, 49-foot-high gated spillway; (2) a 630-foot-long auxiliary spillway; (3) a 3,410-foot-long north embankment; (4) a 680-foot-long south embankment; (5) a 8,700-acre impoundment at a full pool elevation of 237 feet mean sea level; (6) a powerhouse containing four turbines with a total installed capacity of 15.2 MW; (7) a 1,400-foot-long, 46-kV transmission line; and (8) appurtenant facilities. No new facilities are proposed.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 9, 2006.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ≥FERRIS≥ link. Enter the docket number to access the document excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

Magalie R. Salas,

Secretary.

Mailing List for P–659

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Zell Miller Honorable
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CHAIRMAN WORTHY,
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SYLVESTER, GA 31791

[FR Doc. 03–18937 Filed 7–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Applications; Notice of Filing

July 21, 2003.

Backbone Windpower Holdings, LLC

[Docket No. ER02–2559–001]

Badger Windpower, LLC

[Docket No. ER01–1071–002]

Bayswater Peaking Facility, LLC

[Docket No. ER02–669–002]

Blythe Energy, LLC

[Docket No. ER02–2018–002]

Calhoun Power Company I, LLC

[Docket No. ER02–2074–002]

Doswell Limited Partnership

[Docket No. ER90–80–001]

ESI Vansycle Partners, L.P.

[Docket No. ER98–2494–004]

Florida Power & Light Company

[Docket No. ER97–3359–005]

FPL Energy Cape, LLC

[Docket No. ER00–3068–002]

FPL Energy Hancock County Wind, LLC

Docket No. ER03–34–001]

FPL Energy Maine Hydro, Inc.

[Docket No. ER98–3511–006]

FPL Energy MH 50, LP

[Docket No. ER99–2917–003]

FPL Energy Marcus Hook, L.P.

[Docket No. ER02–1903–001]

FPL Energy Mason, LLC

[Docket No. ER98–3562–006]

FPL Energy New Mexico Wind, LLC

[Docket No. ER03–179–002]

FPL Energy Pennsylvania Wind, LLC

[Docket No. ER02–2166–001]

FPL Energy Power Marketing, Inc.

[Docket No. ER98–3566–009]

FPL Energy Rhode Island Energy, L.P.

[Docket No. ER02–2120–001]

FPL Energy Seabrook, LLC

[Docket No. ER02–1838–001]

FPL Energy Vansycle, LLC

[Docket No. ER01–838–002]

FPL Energy Wyman, LLC

[Docket No. ER98–3563–006]

FPL Energy Wyman IV, LLC

[Docket No. ER98–3564–006]

Gray County Wind Energy, LLC

[Docket No. ER01–1972–002]

Hawkeye Power Partners, LLC

[Docket No. ER98–2076–005]

High Winds, LLC

[Docket No. ER03–155–001]

Jamaica Bay Peaking Facility, LLC

[Docket No. ER03–623–003]

Lake Benton Power Partners II, LLC

[Docket No. ER98–4222–001]

Mill Run Windpower, LLC

[Docket No. ER01–1710–002]

Somerset Windpower, LLC

[Docket No. ER01–2139–003]

West Texas Wind Energy Partners, LP

[Docket No. ER98–1965–002]

Take notice that on June 30, 2003, the FPL Energy, LLC, on behalf of certain of its subsidiaries, and Florida Power and Light Company tendered for filing their updated market analysis associated with market-based rate authorizations.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 1, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19036 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0057; FRL–7535–5]

Agency Information Collection Activities; Submission of EPA ICR Number 1160.07 (OMB Number 2060–0114) to OMB for Review and Approval; Comment Request

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 the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR Part 60, Subpart PPP) and NESHAP for Wool Fiberglass Manufacturing Plants (40 CFR Part 63, Subpart NNN).* The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gregory Fried, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7016; fax number: (202) 564–0050; E-mail address: *fried.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0057, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC

20503, and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by E-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR Part 60, Subpart PPP) and NESHAP for Wool Fiberglass Manufacturing Plants (40 CFR Part 63, Subpart NNN) (OMB Control Number 2060–0114, EPA ICR Number 1160.07). This is a request to renew an existing approved collection that is scheduled to expire on July 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Administrator has judged that Particulate Matter (PM) and Hazardous Air Pollutants (HAP) emissions from wool fiberglass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of wool fiberglass manufacturing plants subject to New Source Performance Standards (NSPS) subpart PPP and/or National Emissions Standards for Hazardous Air Pollutants (NESHAP) subpart NNN must provide notifications to EPA of construction, modification, startups, shut downs, date and results of initial performance tests and provide semiannual reports of excess emissions. Owners/operators of wool fiberglass manufacturing facilities subject to NSPS subpart PPP and/or NESHAP subpart NNN must also record continuous measurements of control device operating parameters. For NSPS subpart PPP these operating parameters include gas pressure drop and liquid flow rate if using a wet scrubber and voltage and inlet water flow rates if using an electrostatic precipitator (ESP). For NESHAP subpart NNN operating parameter measurements, include bag leak detection system alarms, furnace operating temperature, glass pull rate, and scrubber and ESP parameter controls.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

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, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 101 hours per response. 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.

Respondents/Affected Entities: Wool Fiberglass Manufacturing Plants.

Estimated Number of Respondents: 61.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 18,216.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $488,500 which includes $0 annualized capital/startup costs and $488,500 annual O&M costs.

Changes in the Estimates: There is a decrease of 882 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to all existing sources having already completed required performance testing given that the compliance date of June 14, 2002, has passed.

Dated: July 17, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19002 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7535–6]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information 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.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or email at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 0226.17; Applications for NPDES Discharge Permits and the Sewage Sludge Management Permits; was approved 06/12/2003; in 40 CFR 122.26(b)(14)(i-xi), 40 CFR 122.21(b-l)(p)(q), 40 CFR 122.21(g)(7), (13), 40 CFR 122.21(a)(2); OMB Number 2040–0086, expires 06/30/2006.

EPA ICR No. 0649.08; NSPS for Metal Furniture Coating; was approved 06/16/2003; in 40 CFR part 60, subpart EE; OMB Number 2060–0106; expires 06/30/2006.

EPA ICR No. 0659.09; NSPS for Surface Coating of Large Appliances;

was approved 06/16/2003; in 40 CFR part 60, subpart SS; OMB Number 2060–0108; expires 06/30/2006.

EPA ICR No. 0783.44; Motor Vehicle Emission Standards and Emission Credits Provisions (Highway Motorcycles and Recreational Vehicles) (Amendments) (Final Rule); was approved 06/11/2003; in 40 CFR part 1051; OMB Number 2060–0104; expires 07/31/2005.

EPA ICR No. 0997.07; NSPS for Petroleum Dry Cleaners; was approved 06/16/2003; in 40 CFR part 60, subpart JJJ; OMB Number 2060–0079; expires 06/30/2006.

EPA ICR No. 1062.08; NSPS for Coal Preparation Plants; was approved 06/16/2003; in 40 CFR part 60, subpart Y; OMB Number 2060–0122; expires 06/30/2006.

EPA ICR No. 1156.09; NSPS for Synthetic Fiber Production Facility; was approved 06/16/2003; in 40 CFR part 60, subpart HHH; OMB Number 2060–0059; expires 06/30/2006.

EPA ICR No. 1432.22; Recordkeeping and Period Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances (proposed rule); was approved 06/16/2003; in 40 CFR part 82, subpart E, 40 CFR part 82, subpart A, § 83.13; OMB Number 2060–0170; expires 05/31/2005.

EPA ICR No. 1711.04; Voluntary Customer Service Satisfaction Surveys; was approved 06/16/2003; OMB Number 2090–0019; expires 06/30/2006.

EPA ICR No. 1820.03; NPDES Storm Water Program Phase III; was approved 06/12/2003; in 40 CFR 122.26(a), 40 CFR 122.26(c), 40 CFR 122.26(g), 40 CFR 122.33, 40 CFR 122.34(g), 40 CFR 123.25, 40 CFR 123.35; OMB Number 2040–0211; expires 06/30/2006.

EPA ICR No. 1838.02; Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures; was approved 06/20/2003; OMB Number 2040–0213; expires 06/30/2006.

EPA ICR No. 1842.04; Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit; was approved 06/12/2003; in 40 CFR 122.26(c)(1)(ii), 40 CFR 122.28(b)(2), 40 CFR 122.41(h–i), 40 CFR 122.41(l), 40 CFR 122.44(K)(2); OMB Number 2040–0188; expires 06/30/2006.

EPA ICR No. 1847.03; Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994; was approved 06/16/2003; in 40 CFR part 62, subpart FFF; OMB Number 2060–0390; expires 06/30/2006.

EPA ICR No. 1900.02; NSPS Small Municipal Waste Combustors; was approved 06/16/2003; in 40 CFR part 60, subpart AAAA; OMB Number 2060–0423; expires 06/30/2006.

EPA ICR No. 2003.02; NESHAP for Integrated Iron and Steel Manufacturing (Final Rule); was approved 06/16/2003; in 40 CFR 63.7840(a), 40 CFR 63.7800(b), 40 CFR 63.7841(b–c), 40 CFR 63.7842(a)(1–3), 40 CFR 63.7842(b–d); OMB Number 2060–0517; expires 06/30/2006.

EPA ICR No. 2014.02; Reporting and Recordkeeping Requirements of the HCFC (Hydro-Chlorofluorocarbon) allowance system (Final Rule); was approved 06/16/2003; in 40 CFR 82.23, 40 CFR 82.24; OMB Number 2060–0498; expires 06/30/2006.

EPA ICR No. 2023.02; Recordkeeping and Reporting Requirements for the Clay Ceramics Manufacturing NESHAP; was approved 06/16/2003; in 40 CFR part 63, subpart KKKKK; OMB Number 2060–0513; expires 06/30/2006.

EPA ICR No. 2042.02; NESHAP for Semiconductor Manufacturing; was approved 06/16/2003; in 40 CFR part 63, subpart BBBBB; OMB Number 2060–0519; expires 06/30/2006.

EPA ICR No. 0940.17; Ambient Air Quality Surveillance; was approved 06/06/2003; in 40 CFR part 58; OMB Number 2060–0084; expires 06/30/2006.

EPA ICR No. 1813.04; Information Collection Request for Proposed Regional Haze Regulations; was approved 07/02/2003; in 40 CFR 51.309; OMB Number 2060–0421; expires 07/31/2006.

EPA ICR No. 1053.07; NSPS Subpart Da—Standards of Performance for Electric Utility Steam Generating Units; was approved 07/02/2003; in 40 CFR part 60, subpart Da; OMB Number 2060–0023; expires 07/31/2006.

EPA ICR No. 2066.02; NESHAP for Engine Test Cells/Stands (Final Rule); was approved 07/03/2003; in 40 CFR part 63, subpart PPPPP; OMB Number 2060–0483; expires 07/31/2005.

EPA ICR No. 2032.02; NESHAP for Hydrocholoric Acid Production (Final Rule); was approved 07/03/2003; in 40 CFR part 63, subpart NNNNN; OMB Number 2060–0529; expires 07/31/2006.

EPA ICR No. 1573.10; Part B Permit Application, Permit Modifications and Special Permits (Renewal); was approved 07/03/2003; in 40 CFR 264.90, 264.193, 264.221, 264.251, 264.272, 264.301, 264.344, 270.1, 270.10, 270.14–270.29, 270.33, 270.40, 270.41, 270.42, 270.50, 270.51, 270.60, 270.62, 270.63, 270.64, 270.65 and 270.552; OMB Number 2050–0009; expires 07/31/2006.

EPA ICR No. 1989.02; Final NPDES and ELG Regulatory Revision for Concentrated Animal Feeding Operations; was approved 07/10/2003; in 40 CFR 122, 40 CFR 122.21(i)(1)(i–xi), 40 CFR 122.21(f), 40 CFR 122.21(f)(1), 40 CFR 122.21(f)(7), 40 CFR 122.23(f)(1–3), 40 CFR 122.23(g–h), 40 CFR 122.28(b)(3)(iv), 40 CFR 122.41, 40 CFR 122.42(e)(1), 40 CFR 122.42(e)(1)(i–iv), 40 CFR 122.42(e)(4), 40 CFR 122.42(e)(3), 40 CFR 122.62, 40 CFR 122.62(b)(2–4), 40 CFR 123, 40 CFR 123.25, 40 CFR 123.40, 40 CFR 123.25(a)(22, 27, 30, 31, 33, 34), 40 CFR 123.26(b), 40 CFR 123.42(e)(3–4), 40 CFR 123.42(e)(4)(i–vi), 40 CFR 123.62, 40 CFR 123.62(a), 40 CFR 123.62(b)(1), 40 CFR 412, 40 CFR 412(a)(1)(i–iii), 40 CFR 412.37(b), 40 CFR 412.37(b)(1–6), 40 CFR 412.37(c), 40 CFR 412.37(c)(1–9); OMB Number 2040–0250; expires 07/31/2006.

EPA ICR No. 1569.05; Approval of State Coastal Nonpoint Pollution Control Programs (CZARA Section 6217); was approved 07/09/2003; OMB Number 2040–0153; expires 07/31/2006.

Short Term Extensions

EPA ICR No. 0976.10; The 2001 Hazardous Waste Report (Biennial Report); in 40 CFR 262.40(b), 262.41, 264.75, 265.75; OMB Number 2050–0024; on 06/25/2003; OMB extended the expiration date through 09/30/2003.

EPA ICR No. 1764.02; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products; in 40 CFR part 59, subpart C; OMB Number 2060–0348; on 06/20/2003; OMB extended the expiration date through 09/30/2003.

EPA ICR No. 1765.02; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings; in 40 CFR part 59, subpart B; OMB Number 2060–0353; on 06/20/2003 OMB extended the expiration date through 09/30/2003.

EPA ICR No. 1912.01; Information Collection Request: National Primary Drinking Water Regulation for Lead and Copper (Final Rule); OMB Number 2040–0210; OMB extended the expiration date through 09/30/2003.

EPA ICR No. 1560.06; National Water Quality Inventory Reports (TMDL Final Rule: Clean Water Act Sections 305(b), 303(d), 314(a) and 106(e)); OMB Number 2040–0071; OMB extended the expiration date through 10/31/2003.

Comment Filed

EPA ICR No. 2044.01; NESHAP Surface Coating of Plastic Parts and Products; in 40 CFR part 63, subpart PPPP; on 06/16/2003 OMB filed a comment.

EPA ICR No. 1975.01; NESHAP for Stationary Reciprocating Internal Combustion Engines; in 40 CFR part 63, subpart ZZZZ; on 06/16/03 OMB filed a comment.

EPA ICR No. 1897.05; Information Requirements for Nonroad Diesel Engines (Nonroad Large SI Engines and Marine Diesel Engines); in 40 CFR part 94, 40 CFR part 1048; on 06/11/2003 OMB filed a comment.

EPA ICR No. 1967.01; NESHAP for Stationary Combustion Turbines; in 40 CFR part 63, subpart YYYY; on 07/03/2003 OMB filed a comment.

EPA ICR No. 2096.01; NESHAP for Iron and Steel Foundries (Proposed Rule); in 40 CFR 63.7700, 40 CFR 63.7720, 40 CFR 63.7340, 40 CFR 63.7750, 40 CFR 63.7741, 40 CFR 63.7751, 40 CFR 63.7752; on 07/03/2006 OMB filed a comment.

EPA ICR No. 2099.01; Implementation of Pollution Prevention Alternatives; in 40 CFR part 63; on 07/03/2003 OMB filed a comment.

EPA ICR No. 2046.01; NESHAP for Mercury Cell Chlor-Alkali Plants (Proposed rule) in 40 CFR part 63, subpart IIIII; on 07/03/2003 OMB filed a comment.

EPA ICR No. 2044.01; Reporting and Recordkeeping Requirements for National Emission Standards for Hazardous Air Pollutants for Plastic Parts and Products Surface Coating in 40 CFR part 63, subpart PPPP; on 06/24/2003 OMB filed a comment.

Withdrawn

EPA ICR No. 2083.01; Estimating the Value of Improvements to Coastal Waters—A Pilot Study of a Coastal Valuation Survey; on 06/12/2003 EPA withdrew ICR from OMB review.

Dated: July 17, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19003 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL200–3; FRL–7535–7]

Adequacy Status of the Submitted 2005 and 2007 Revised Attainment Demonstration Budgets for the 1-hour Ozone National Ambient Air Quality Standard for Transportation Conformity Purposes for the Chicago, IL Severe Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the revised attainment year motor vehicle emissions budgets (''budgets'') for volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the submitted revision to the 1-hour ozone attainment demonstration state implementation plan (SIP) for the Chicago, Illinois severe nonattainment area to be adequate for conformity purposes. These attainment year budgets were recalculated using EPA's latest motor vehicle emissions factor model, MOBILE6. On March 2, 1999, the DC Circuit Court ruled that submitted state implementation plan budgets cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Chicago, Illinois severe ozone nonattainment area can use the revised 2007 attainment year budgets of VOC and NO_X from the submitted revision to the 1-hour ozone attainment demonstration SIP for future conformity determinations. Illinois also submitted an updated 2005 VOC budget as part of the Rate Of Progress requirement. As a result of this finding, the 2005 VOC budget can also be used for conformity determinations in the Chicago, Illinois area.

DATES: This finding is effective August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *morris.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'' or ''our'' is used, we mean EPA.

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Illinois Environmental Protection Agency on June 26, 2003, stating that the revised attainment year motor vehicle emissions budgets in the Chicago, Illinois submitted 1-hour ozone attainment demonstration SIP revision (dated April 11, 2003) are adequate for conformity purposes. The purpose of Illinois's April 11, 2003 submittal was to address its enforceable commitment to revise the attainment year budgets using MOBILE6 within two years of the release of the model. This enforceable commitment was approved by EPA on November 13, 2001 (66 FR 56903). EPA's adequacy finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance, which can also be found on EPA's Web site at: *http://www.epa.gov/otaq/traq*, in making our adequacy determination.

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

Dated: July 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–19004 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7536–4]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This Council was established by the Safe Drinking Water Act (SDWA) to provide

practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the SDWA. The Council consists of fifteen members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. The SDWA requires that at least two members of the Council represent small, rural public water systems. On December 15 of each year, five members complete their appointment. Therefore, this notice solicits names to fill the five vacancies, with appointed terms ending on December 15, 2006.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

DATES: All nominations must be received by October 15, 2003.

ADDRESSES: Please submit nominations to Brenda P. Johnson, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

FOR FURTHER INFORMATION CONTACT: Brenda P. Johnson at the address listed in the **ADDRESSES** section, by telephone at 202/564–3791, or by e-mail at *Johnson.BrendaP@epa.gov.*

SUPPLEMENTARY INFORMATION: Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face-to-face meetings each year, generally in the spring and fall. Additionally, members may be asked to serve on one of the Council's workgroups that are formed each year to assist the EPA in addressing specific programmatic issues. These workgroup meetings are held approximately four times a year, typically with two meetings by conference call.

Dated: July 22, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–19008 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6642–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–F65042–WI Rating EC2, Sunken Moose Project, Proposal to Restore and/or Maintain the Red and White Pine Communities, Washurn Ranger District, Chequamegon-Nicolet Forest, Bayfield County, WI.

Summary: EPA expressed environmental concerns relating to adverse impacts to interior forest species, habitat fragmentation and non-native invasive species.

ERP No. D–DOA–K36137–HI Rating EC2, Lahaina Watershed Flood Control Project, To Reduce Flooding and Erosion Problems, U.S. Army COE Section 404 and NPDES Permits, County of Maui, HI.

Summary: EPA expressed environmental concerns regarding the project's impacts on the nearshore marine environment, waters of the U.S., and water quality. In addition, EPA is concerned about the range of alternatives evaluated in the DEIS, and whether future development on adjacent lands have been incorporated into project design and evaluation of impacts.

ERP No. D–FHW–L40217–AK Rating EC2, South Extension of the Coastal Trail Project, Existing Tony Knowles Coastal Trail Extension from Kincaid Park through the Project Area to the Potter Weigh Station, U.S. Army COE Section 10 and 404 Permits Issuance, Municipality of Anchorage, Anchorage, Alaska.

Summary: EPA has environmental concerns with the proposed project, particularly concerning impacts to the aquatic environment. EPA recommends alignment modifications to further avoid and minimize adverse impacts. EPA requests further information regarding the affected environment, stream crossings, design detail for accommodating wildlife passage, siting or location clarifications, and other specifics.

ERP No. D–NOA–E91013–00 Rating EC1, Essential Fish Habitat Components of Amendment 13 to the Northeast Multispecies Fishery Management Plan, Selection of the Best Method of Minimizing Impacts of Groundfish Fishing on Essential Fish Habitats, New England Fishery Management Council, ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, VA, and NC.

Summary: EPA expressed environmental concern on numbers of traps, wet storage of traps and no tag accountability.

ERP No. D–NOA–G39038–LA Rating LO, Programmatic EIS—The Louisiana Regional Restoration Planning Program, Establishment and Implementation of Natural Resource Trust Mandates, LA.

Summary: EPA had no objection to the selection of the preferred alternative.

ERP No. D–NOA–L91017–00 Rating EO2, Programmatic EIS—Pacific Salmon Fisheries Management Plan, Off the Coasts of Southeast Alaska, Washington, Oregon and California, and the Columbia River Basin, Implementation, Magnuson-Stevens Act, AK, WA, OR, and CA.

Summary: EPA has environmental objections due to uncertainty about the effects of the alternatives on the 26 listed ESUs of salmon. The draft programmatic EIS does not clearly disclose critical information regarding the effect of the alternatives, does not provide identifiable evidence to support its conclusions that all alternatives would not jeopardize ESUs, and does not identify a preferred alternative. EPA recommends that analysis in the final programmatic EIS demonstrate that alternatives would protect and recover the 26 listed species of salmon affected by proposed activities.

ERP No. D–UAF–K11109–AZ Rating LO, Barry M. Goldwater Range (BMGR) Proposed Integrated Natural Resources Management Plan (INRMP), Implementation, Military Lands Withdrawal Act of 1999 (Pub. L. 106–65) and Sike Act (16 U.S.C. 670), Yuma, Pima and Maricopa Counties, AZ.

Summary: EPA expressed a lack of objections but recommended mitigation to protect water quality by restriction on driving recreational vehicles in desert washes.

ERP No. D–UAF–K11110–CA Rating EC2, Los Angeles Air Force Base Land Conveyance, Construction and Development Project, Transfer Portions of Private Development in Exchange for Construction of New Seismically Stable Facilities, Cities of El Sequndo and Hawthorne, Los Angeles County, CA.

Summary: EPA expressed environmental concerns regarding air toxic impacts and recommended additional analysis and mitigation to reduce air pollution.

ERP No. DB–AFS–L65155–00 Rating LO, Northern Spotted Owl Project, Updated information to Amend Selected Portions of the Aquatic Conservation Strategy, (Part of the Northwest Forest Plan), Protect and Restore Watersheds, CA, WA, and OR.

Summary: EPA has no objections to the proposed action. However, the final EIS should consider a more specific statement of project purpose, include additional data on existing conditions and recent Strategy actions in the Plan area, and a prediction of cumulative impacts based on key threshold levels.

Final EISs

ERP No. F–FHW–J40175–UT, Reference Post (RP) 13 Interchange and City Road Project, Construction of New Interchange at RP 13 between I–15 and City Road in Washington City, Funding, Washington County, UT.

Summary: EPA has environmental concerns regarding the lack of alternatives presented in the FEIS to meet the purpose and need of accommodating planned future growth. EPA continues to believe that, in this case, one build alternative is not sufficient for an adequate EIS.

ERP No. F–NPS–J65365–00, Glen Canyon National Area, Personal Watercraft Rule-Making, Implementation, Lake Powell, Coconino County, AZ and Garfield, Kane, San Juan and Wayne Counties, UT.

Summary: EPA continued to express environmental concerns about potential violations of State water quality standards and suggested a compliance strategy. While EPA commends the NPS for providing an improved preferred alternative there were other reasonable alternatives that should have been analyzed.

Dated: July 22, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–19010 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6642–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed July 14, 2003 Through July 18, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030330, Draft EIS, AFS, CO, Copper Mountain Resort Trails and Facilities Improvements, Implementation, Special Use Permit, White River National Forest, Dillon Ranger District, Summit County, CO, Comment Period Ends: September 8, 2003, Contact: Michael Liu (970) 468–5400.

EIS No. 030331, Final EIS, AFS, CA, Blue Fire Forest Recovery Project, Proposal to Move the Existing Condition Caused by the Blue Fire of 2001 Towards the Desired Condition, Modoc National Forest, Warner Mountain Ranger District, Lassen and Modoc Counties, Wait Period Ends: August 25, 2003, Contact: Edith Asrow (530) 279–6116. This document is available on the Internet at: *http://www.fs.fed.us/r5/modoc/publications/Bluefeis.shtml.*

EIS No. 030332, Final EIS, AFS, CO, Trout-West Hazardous Fuels Reduction Project, Proposed Action to Reduce Fuels, Pike-San Isabel National Forest, Trout and West Creek Watersheds, Teller, El Paso and Douglas Counties, CO, Wait Period Ends: August 25, 2003, Contact: Rochelle Desser (541) 592–4075. This document is available on the Internet at: *http://www.fs.fed.us/r2/psicc/spl/twest.htm.*

EIS No. 030333, Draft EIS, IBR, CA, Battle Creek Salmon and Steelhead Restoration Project, Restoring Habitat in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA, Comment Period Ends: September 22, 2003, Contact: Mary Marshall (916) 978–5248.

EIS No. 030334, Final EIS, AFS, OR, Metolius Basin Forest Management Project, Fuel Reduction and Forest Health Management Activities, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR, Wait Period Ends: August 25, 2003, Contact: Kris Martinson (541) 549–7730.

EIS No. 030335, Draft EIS, AFS, WA, Gotchen Risk Reduction and Restoration Project, Implementation, Mount Adams Ranger District, Gifford Pinchot National Forest, Skamania and Yakima Counties, WA, Comment Period Ends: September 8, 2003, Contact: Julie Knutson (509) 395–3410.

EIS No. 030336, Final EIS, AFS, MT, Management Area 11 Snowmobile Use Areas on the Seeley Lake Ranger District, Implementation, Lola National Forest, Missoula and Powell Counties, MT, Wait Period Ends: August 25, 2003, Contact: Timothy Love (406) 677–2233.

EIS No. 030337, Draft EIS, AFS, OR, Mt. Ashland Ski Area Expansion, Site Specific Project, Maintenance and Enhancements of Environmental Resources, Implementation, Special Use Permit, Ashland Ranger District, Rogue River National Forest and Scott River Ranger District, Klamath National Forest, Jackson County, OR, Comment Period Ends: September 23, 2003, Contact: John Schuyler (541) 482–3333.

EIS No. 030338, Draft EIS, FRC, OR, Bull Run Hydroelectric Project (FERC No.477–024), Proposal to Decommission Bull Run Project, and Remove Facilities Project, Including Marmot Dam, Little Sandy Diversion Dam and Roslyn Lake, Application to Surrender its License), Sandy, Little Sandy, Bull Run Rivers, Town of Sandy, Clackamas County, MS, Comment Period Ends: September 8, 2003, Contact: Alan Mitchnick (202) 502–6074. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 030339, Draft Supplement, FTA, NJ, Newark-Elizabeth Rail Link-Elizabeth Segment to Document the Social, Economic and Transportation Impact of the 5.8 mile Light Rail Transit (LRT) Alignment, Minimal Operable Segment 3 (MOS–3), City of Elizabeth, Union County, NJ, Comment Period Ends: September 8, 2003, Contact: Irwin B. Kessman (212) 668–2170.

EIS No. 030340, Draft Supplement, SCS, MS, Town Creek Watershed Project, To Address the Impact of Installing the Floodwater Retarding Structures (FWRS) No. 1, 5, 8, and 59 and to Delete FWRS No. 10A, Lee, Pontotoc, Prentiss, and Union Counties, MS, Comment Period Ends: September 8, 2003, Contact: Homer L. Wilkes (601) 965–5205.

Amended Notices

EIS No. 030313, Draft EIS, NPS, NY, NJ, Ellis Island and Statue of Liberty

National Monument Development Concept Plan, Long-Term Rehabilitation and Reuse for Historic Buildings, Implementation, New York Harbor, NY and NJ, Comment Period Ends: September 12, 2003, Contact: Cynthia Garrett (212) 363–3206 ext. 100. Revision of FR Notice Published on 7/11/2003: Correction to Contact Person Name and Telephone Number.

EIS No. 030327, Draft EIS, FRC, CT, Housatonic River Hydroelectric Project, Application to Relicense Existing Licenses for Housatonic Project No. 2576–022 and the Falls Village Project No. 2597–019, Housatonic River Basin, Fairfield, New Haven and Litchfield Counties, CT, Comment Period Ends: September 16, 2003, Contact: Jack Duckworth (202) 502–6392. Revision of FR Notice Published on 7/18/2003: CEQ Comment Period Ending 9/2/2003 has been Corrected to 9/16/2003.

Dated: July 22, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–19009 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0231; FRL–7315–6]

Notice of Receipt of Requests to Voluntarily Cancel Fenridazone Potassium Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by a registrant to voluntarily cancel a certain pesticide registration.

DATES: Unless the Agency receives any substantive comments within the comment period that would merit its further review of this request, or the request has been withdrawn by August 25, 2003, EPA intends to issue an order canceling the registration at the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; e-mail address: *fuller.demson@epamail.epa..gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, 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–2003–0231. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of a request from the registrant to cancel its EPA Registration for the pesticide product containing the active ingredient, fennridazone potassium. The technical registrant, Monsanto Company submitted a letter to the Agency on May 20, 2003, requesting a voluntary cancellation of their only registration for the product containing fenridazone potassium. This registration is listed in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
524–453	Hybrex 2LC Chemical Hybridizing Agent	Fenridazone potassium

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrant has requested that EPA waive the 180–day comment period. EPA is granting the registrants' request to waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice

unless the Agency receives substantive comments within the comment period that would merit further review of the request. The registration for which cancellation was requested is identified in Table 1. of this unit.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling this registration. Users of this pesticide or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day period.

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
524	Monsanto Company 600 13th Street, NW Suite 600 Washington, DC 20005

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 25, 2003. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The order effecting this requested cancellation will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

In the letter the Agency received from the registrant on May 20, 2003, the registrant stated that the Hybrex 2LC Chemical Hybridizing product has not been sold since 1989 nor has the chemical ever been distributed. Therefore, no products should be in the channels of trade.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 18, 2003.

Richard P. Keigwin, Jr.,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–19007 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–2332]

Notice of Certification of State Telecommunications Relay Service (TRS) Programs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this document is to notify state Telecommunications Relay Service (TRS) programs that certification of their program has been granted through July 26, 2008. Notice is hereby given that the applications for certification of state Telecommunications Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). The Commission will provide further Public Notice of the certification of the remaining applications for certification once final review of those states' applications has been completed. On the basis of the state applications, the Commission has determined that: the TRS program of the states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604; the TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and the TRS programs of the listed states in no way conflict with federal law.

DATES: This certification shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *Erica.Myers@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 03–2332, CC Docket No. CC 98–67, released July 16, 2003. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's web

site at *http://www.fcc.gov/cgb/dro/trs_by_state.html.* They 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.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call Consumer & Governmental Affairs Bureau, at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro.*

Synopsis: The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with the new rules adopted and any additional new rules that are adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2007, the states may apply for renewal of their TRS program certification by filing demonstration in accordance with the Commission's rules, pursuant to 47 CFR sections 64.605(a) and (b).

Second Group of States Approved for Certification

File No: TRS–51–02, Georgia Public Utilities Commission, State of Georgia
File No: TRS–07–02, Kansas Corporation Commission, State of Kansas
File No: TRS–45–02, New Jersey Board of Utilities, State of New Jersey
File No: TRS–11–02, South Carolina Budget & Control Board, State of South Carolina
File No: TRS–22–02, Hawaii Public Utilities Commission, State of Hawaii
File No: TRS–34–02, Department of Public Utilities, State of Massachusetts
File No: TRS–59–02, Division of Public Utilities and Carriers, State of Rhode Island

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–18972 Filed 7–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Total Bancshares, Inc., Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of TotalBank, Miami, Florida.

Board of Governors of the Federal Reserve System, July 21, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18983 Filed 7–24–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Research on the Impact of Law on Public Health, Program Announcement 03049

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): Research on the Impact of Law on Public Health, Program Announcement 03049.

Times and Dates: 1 p.m.–1:30 p.m., August 11, 2003 (Open). 1:30 p.m.–5 p.m., August 11, 2003 (Closed). 8:30 a.m.–4 p.m., August 12, 2003 (Closed).

Place: Sheraton Midtown Colony Square Hotel, 188 14th Street at Peachtree, Atlanta, GA 30361, Telephone 404.892.6000.

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 Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 03049.

FOR FURTHER INFORMATION CONTACT: Joan F. Karr, Ph.D., Scientific Review Administrator, Public Health Practice Program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30341, Telephone 770.488.2597.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 21, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–18955 Filed 7–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality (AHRQ)

Statement of Organization, Functions, and Delegations of Authority

Part E, Chapter E (Agency for Healthcare Research and Quality), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 15955–58, April 10, 1996, most recently amended at 66 FR 44149–50 on August 22, 2001) is further amended to reflect recent organizational changes. The specific amendments are as follows:

Under *Section E–10, Organization,* delete A. through K. and replace with the following:

A. Office of the Director.

B. Center for Delivery, Organization, and Markets.

C. Center for Financing, Access, and Cost Trends.

D. Center for Outcomes and Evidence.

E. Center for Primary Care, Prevention, and Clinical Partnerships.

F. Center for Quality Improvement and Patient Safety.

G. Office of Communications and Knowledge Transfer.

H. Office of Extramural Research, Education, and Priority Populations.

I. Office of Performance, Accountability, Resources and Technology.

Under *Section E–20. Functions,* delete all titles and statements and replace with the following:

Office of the Director (EA). Directs the activities of the Agency for Healthcare Research and Quality (AHRQ) to ensure the achievement of strategic objectives. Specifically: (1) Provides overall leadership for the Agency; (2) maintains the scientific integrity and objectivity of the Agency's research; (3) directs and coordinates the Agency's research, research training programs, and dissemination activities; (4) ensures that Agency programs support Administration goals and objectives; (5) represents the Agency within the Department, at the highest level of Government, and to the public; (6) coordinates the legislative activities of the Agency, the review and clearance of Department and other Federal policies and regulations, and reports to Congress; (7) controls the flow of correspondence and official documents entering and leaving the Agency; (8) manages the National Advisory Council; and (9) supports the AHRQ Ombuds.

Center for Financing, Access, and Cost Trends (EC). Conducts, supports and manages studies of the cost and financing of health care, the access to health care services and related trends. Develops data sets to support policy and behavioral research and analyses. These studies and data development activities are designed to provide health care leaders and policymakers with the information and tools they need to improve decisions on health care financing, access, coverage and cost. Specifically: (1) Conducts, supports and manages research and analysis of trends and patterns of health expenditures, public and private insurance coverage, use of personal health services, health status and access to care for the general population and subgroups of policy interest; (2) conducts and manages health sector surveys such as medical expenditure surveys; surveys of medical care providers, employers and other sources of insurance coverage and health benefits; and surveys of the use, cost, and financing of care for special populations; (3) collects, reorganizes, and analyzes administrative databases related to health care use, health status, cost and financing; (4) provides modeling and projections of health care use, status, expenditures, and payments for policy research; (5) conducts and supports statistical and methodological research on survey design, sampling and estimation techniques, and data quality; (6) conducts and supports surveys and research of institutional and community based long term care; (7) evaluates administrative data sets for intramural and extramural research including policy and methodological studies; and (8) builds research and data collection partnerships with the health care sector, employers, and foundations, and represents the Agency in meetings with Federal agencies and experts on health policy issues especially issues related to health expenditures, access, and insurance, Federal and State health care programs.

Division of Modeling and Simulation (ECB). Provides research, models, and data bases to support microsimulation analyses of household impacts and trends in health expenditures from health policies embodied in current law and from health care policies embodied in generic versions of proposed health care reforms. Specifically: (1) Projects the National Medical Expenditure Survey and the Medical Expenditure Panel Survey household expenditure data to future years; (2) aligns the projected household expenditure data to the Health Care Financing Administration's National Health Expenditures by type of health service and payment source; (3) uses a variety of outside data sources to project, for example, the household population, Medicaid enrollees, household income, and private and public health insurance benefits; (4) develops and updates the Agency's MEDSIM microsimulation model's software to estimate current household income and payroll taxes, current private and public insurance coverage and benefits, and the costs and consequences of generic versions of proposed health care reforms; (5) provides the latest versions of the projected expenditure data bases and associated research products on the Agency home page; (6) uses MEDSIM and its data bases to conduct and publish research on current and proposed health policies and on trends in household health care expenditures; and (7) provides cost and distributional MEDSIM estimates of specific legislative health care reform proposals to provide predecisional guidance to requesting federal officials.

Division of Social and Economic Research (ECC). Provides basic descriptive and behavioral analyses of the population's access to, use of expenditures and sources of payment for health care; the availability and costs of private health insurance in the employment-related and non-group markets; the population enrolled in public health insurance coverage and those without health care coverage; and the role of health status in health care use, expenditures, and household decision-making, and in health insurance and employment choices. Specifically: (1) Provides analytical input to the design and development of primary data collection efforts and research-related data bases; (2) develops a research agenda related to health care use, expenditures, access to care, sources of payment, health insurance, and health status; (3) conducts applied research in these areas by applying substantive research tools from the fields of health services research, health economics, medical sociology, public policy analysis, demography, statistics and econometrics; (4) disseminates research findings through presentations at conferences, publications in peer reviewer journals, book chapters, and conference volumes; (5) provides substantive technical expertise on health care use, expenditures, and

insurance coverage to other units within AHRQ, other governmental units, private sector research institutions, and by serving as technical reviewers and advisors to scholarly journals, technical advisory committees, and private and public sector task forces.

Division of Statistical Research and Methods (ECD). Plans and conducts studies on statistical methods and the use of statistics in survey design in health services research. These studies provide the bases for policy research and analysis and for technical assistance provided to other Centers and Offices within the Agency. Specifically: (1) Identifies, designs, conducts, and implements statistical research and evaluation studies in accordance with the Agency's research priorities; (2) oversees the statistical design of the National Medical Expenditure Panel Survey (MEPS); and (3) conducts research in the areas of survey design, sampling, estimation, imputation, the analysis of complex survey data, and the reduction of sources of sampling and nonsampling errors in the design of national health care surveys.

Division of Survey Operations (ECE). Plans, implements and monitors the fielding of CFACT surveys. Specifically: (1) Develops and disseminates public use data files which including editing, imputation and estimation tasks; (2) assists in the development of data reports which are of particular interest to the Department and other Federal, State and local government agencies as well as the larger research community; and (3) monitors the development of Computer Assisted Personal Interviewing (CAPI) data collection instruments.

Center for Delivery, Organization, and Markets (EH). Provides a locus of leadership and expertise for advances in health care delivery, organization, and markets through research. Specifically: (1) Conducts, supports, and manages studies designed to give health care leaders and policy makers the information and tools they need to improve health system performance; (2) generates evidence on how health care delivery and organizational dynamics affect performance through qualitative and quantitative research, delivery-based research networks, data and tool development and other state, federal, and private partnerships; (3) examines the impact of delivery and organizational attributes and changes—including payer mix, delivery sites, practice patterns, structure, workforce, leadership, governance and culture—across acute, community-based, and long-term-care settings; (4) studies how market forces and reactions to them—such as payment methods financial and non-financial incentives, safety net funding, employer purchasing strategies, quality measurement and reporting, and regulations—influence performance; and (5) represents the Agency in meetings with Federal agencies and experts on health policy issues especially those related to advancing evidence-based decision making in organizations and the public policy arena.

Center for Outcomes and Evidence (EJ). Conducts and supports research and assessment of health care practices, technologies, processes, and systems. Specifically: (1) Conducts and supports research, assessments, and demonstrations on safety, quality, effectiveness, cost-effectiveness, and other relevant attributes of health care practices, technologies, processes and systems; (2) facilitates and coordinates the development of infrastructures for collection, analysis, and synthesis of evidence and data on the safety, effectiveness and quality of health care practices, technologies, processes, and systems; (3) serves as a center of excellence for methods and measurement development for the conduct and analysis of outcomes research, cost effectiveness analysis, and evidence-based systematic reviews and technology assessments; (4) serves as a source of evidence based information about therapeutics, technologies, and healthcare practices for clinical and policy decision makers; (5) directs and supports research on and implementation of the appropriate use of therapeutics and medical technologies, including preventing overuse, under-use and adverse effects; (6) provides an array of tools and products to promote and facilitate evidence-based clinical practices and health care decision making; (7) fosters partnerships with health care provides, insurers, employers and consumers to bring about sustainable systemic change to implement evidence-based practices and improve patient outcomes and quality of care; and (8) represents the Agency in meetings with experts and organizations in the areas of outcomes research and evidence-based medicine and organizes conferences on these topics.

Center for Primary Care, Prevention, and Clinical Partnerships (EK). Expands the knowledge base for clinical providers and patients and to assure the translation of new knowledge and systems improvement into primary care practices. Supports and conducts research to improve the access, effectiveness, and quality of primary and preventive health care services in the United States. Specifically: (1) Supports primary care practice-based research networks (PBRNs) in order to investigate questions related to community-based practice and to improve the quality of primary and preventive care; (2) responsible for the rigorous evaluation of clinical research assessing the merits of preventive measures, including screening tests, counseling, immunizations, and chemoprevention through the United States Preventive Services Task Force; (3) serves as the Agency's locus for the use of information technology to improve health care and facilitates the evaluation and diffusion of effective information technology tools into clinical practice; and (4) supports research and demonstrations that improve healthcare system preparedness for bioterrorism and other public health threats, with an emphasis on the role of front-line clinical providers.

Center for Quality Improvement and Patient Safety (EL). Works to improve the quality and safety of our health care system through research an implementation of evidence. Specifically: (1) Conducts and supports research, demonstrations, and evaluations of the quality of health care and patient safety across our health care systems and, specifically, for priority populations; (2) conducts and supports research on the measurement of health care quality and promotes the use of these measures; (3) conducts and supports research on effective ways to improve the quality of health care and participates in the dissemination of this knowledge; (4) evaluates methods for identifying, preventing and ameliorating medical errors and enhancing patient safety; (5) designs, conducts, and supports surveys to assess the quality of and patients' experiences with health care services and systems; (6) develops and disseminates annual reports on health care quality, disparities and patient safety; (7) provides technical assistance and gathers information on the use of quality measures, consumer and patient information, and reporting on patient safety and the resulting effects; (8) supports dissemination and communication activities to improve quality of care and patient safety; (9) partners with stake holders to implement research findings and evidence related to quality measurement, quality improvement and patient safety; and (10) represents the Agency in meetings with domestic and international experts and organizations concerned with measuring and

evaluating the quality of care and enhancing patient safety.

Office of Communications and Knowledge Transfer (EN). Designs, develops, implements, and manages programs for disseminating the results of Agency activities with the goal of changing audience behavior. Specifically: (1) Communicates the results and significance of health services research and other AHRQ initiatives to the health care industry, health care providers, consumers and patients, policy makers, researchers, and the media with particular emphasis on communicating AHRQ initiatives in the ways each of these constituencies are most interested and are likely to lead to behavior change; (2) manages the editing, publication, and information distribution processes of the Agency, including Freedom of Information Act administration; (3) provides the administrative support for reference services and the distribution of technical information to Agency staff; (4) manages the public affairs activities of the Agency, Agency clearinghouse for responding to requests for information and technical assistance, and a program for consumer information about health care research findings; (5) directs a user liaison program to provide health care research and policy findings to Federal, State and local public officials, and other audiences as appropriate; (6) evaluates the effectiveness of Agency dissemination strategies and implements changes indicated by such evaluations; and (7) represents the Agency in meetings with Department representatives on press releases, media events, and publication clearance.

Division of Print and Electronic Publishing (EBB). Responsible for disseminating AHRQ's many and varied informational products.Ensures that findings and information from conducted or funded by AHRQ are created in forms useful to intended recipients. Specifically: (1) Produces information products in a variety of print and electronic formats that are scientifically bound and appropriately targeted to various audiences; (2) edits and controls the review and publication of all AHRQ documents; (3) ensures proper clearance procedures consistent the Departmental rules; (4) provides interfaces with the Government Printing Office and National Technical Information Service; (5) organizes and conducts AHRQ's exhibits program and provides conference support services to program staff; (6) provides and coordinates graphics, printing and visual aids production for AHRQ; (7) analyzes AHRQ audiences and information needs, and recommends information products that meet AHRQ's scientific information and dissemination goals; and (8) works with and assists the National Library of Medicine in efforts to improve the availability of health services information to the public.

Division of Public Affairs (ENC). Responsible for planning and carrying out the public affairs activities the Agency. Specifically: (1) Handles AHRQ media relations; (2) develops health care research information dissemination partnerships with other Federal agencies, provider groups, the continuing education and continuing medical education communities, and the private sector; (3) ensures that findings and information from research conducted or funded by AHRQ are made promptly available to the public and private sectors; (4) analyzes AHRQ audiences and information needs and recommends new outreach/dissemination programs and information products to meet AHRQ's scientific information and dissemination goals and needs of AHRQ target audiences; (5) recommends the most effective and efficient approaches to information dissemination; (6) develops and evaluates the effectiveness of Agency dissemination strategies; (7) manages AHRQ's publication clearinghouse; (8) responds to public inquires about AHRQ and its research; (9) makes final reports of Agency-supported research available to the public through the National Technical Information Service; and (10) carries out AHRQ's Freedom of Information Act activities.

Division of User Liaison and Research Translation (END). Provides direction and coordination of the Agency's program to define the issues, problems, and information needs of selected users of health services research, especially public and private sector policymakers, and to disseminate to them relevant research findings, program data, and descriptive information related to the organization, planning, management, financing, delivery, evaluation, and outcomes of health services at the Federal, state, and local level. Specifically: (1) Develops syntheses of research findings focused on particular issues dealing with policy concerns and operational problems; (2) plans and conducts workshops and seminars to provide research findings and related information to policymakers and other consumers of health services research to allow them to make better informed health care policy decisions; (3) maintains liaison with State and local government organizations, public policy organizations, and with the research community and receives and appropriately transmits information which may impact the Agency's research plan and priority setting process; (4) formulates, in collaboration with Agency staff, appropriate policies and activities to develop effective linkages with potential users of health services research; (5) communicates information regarding user research needs to the Agency Director and appropriate Agency staff to ensure user needs are adequately addressed in current and planned Agency project; (6) develops and implements mechanisms to identify and contact potential users of research findings and related information; (7) plans meetings and coordinates contacts between Agency staff and individual users and representatives of users' groups and organizations; (8) provides assistance and advice to other Federal agencies and organizations in evaluating the utility of Federally-sponsored research to State and local government officials; and (9) provides technical assistance for the design and implementation of research projects undertaken by State and local governments.

Office of Extramural Research, Education, and Priority Populations (EP). Directs the scientific review process for grants and Small Business Innovation Research (SBIR) contracts, manages Agency research training programs, evaluates the scientific contribution of proposed and on-going research, demonstrations, and evaluations, and supports and conducts health services research on priority populations. Specifically: (1) Directs the process for selecting, reviewing, and funding grants and reviewing SBIR contracts for scientific merit and program relevance; (2) assigns grant applications to Centers and Offices for administrative action; (3) manages the process for making funding decisions for grants; (4) directs Agency research training and career development programs and implementation of the National Research Service Award authority; (5) manages the committee management and scientific integrity processes for the intramural and extramural programs of the Agency; (6) develops and coordinates clearance of peer review regulations, as required, policy notices and program announcements; (7) facilitates Agency-wide communication and coordination regarding extramural policy, planning, and analysis; (8) represents the Agency in meetings with experts and organizations on issues related to the administration of the Agency's scientific programs; (9) advises the Agency

leadership on matters pertaining to the health needs and health care of priority populations, including scientific, ethical, legal and policy issues; (10) prepares the agenda for priority populations research—both extramural and intramural—through the Agency's strategic planning process, needs assessments, and user input; (11) serves as an expert resource within the Agency on priority populations to assist program development and participates in the development of policies and programs to implement the Agency's priority populations agenda; (12) fosters new knowledge, tool, talent, and strategy development related to priority populations by recommending, leading, coordinating and conducting new initiatives, including intramural initiatives; (13) works in partnership with other Centers and Offices to design and implement efforts to translate, disseminate, and implement evidence-based initiatives and programs to improve health care for priority populations; (14) evaluates the degree to which the Agency is meeting its goals for priority populations; (15) provides national expertise to Agency staff and Agency partners on priority populations issues, establishing and maintaining liaison with other knowledgeable or concerned agencies, governments and organizations; (16) establishes new contacts and cultivates present ones with external groups (a) To spur increased awareness and emphasis on priority populations within the health services research, health care policy, and health care delivery communities, (b) to partner with organizations and agencies to expand research on priority populations, thereby securing additional resources for these activities, and (c) to build research and implementation capacity on priority populations; and (17) enhances the visibility of the Agency in priority populations through frequent presence and delivery of speeches and scientific presentations of meetings of relevance to the field and to AHRQ's mission.

Division of Research Education (EPB). Develops, implements, and evaluates a comprehensive extramural health services research education program which supports the career development of predoctoral and postdoctoral students. Specifically: (1) Manages the AHRQ research education/training portfolio, which includes National Research Service Award (NRSA) institutional training grants, NRSA individual postdoctoral training grants, dissertation training grants, and incentive innovation awards; (2) establishes systems/mechanisms to monitor the external health care environment for research needs of potential private and public sector employers and to anticipate special training needs; (3) implements new programs and support mechanisms, and modifies existing ones to meet changing needs; (4) develops and manages activities intended to evaluate the effects of past investments in health services research training by examining career patterns, publication records, and research productivity of persons supported by AHRQ; (5) promotes visibility for the field of health services research and the availability of training support through a variety of mechanisms; (6) keeps abreast of Department policies and procedures which pertain to extramural research education training, and assures compliance at the AHRQ level; and (7) works with AHRQ leadership to sure communication and collaboration between ORREP and program centers with an interest in research education.

Division of Scientific Review (EPC). Plans and carries out the scientific review for all AHRQ extramural research grants and SBIR proposals. Specifically: (1) Assures compliance with organizational, regulatory, and policy aspects of peer review; (2) determines review requirements for standing study sections and special emphasis panels; (3) anticipates needs/changes regarding the charters of standing study sections, establishes and implements procedures for chartering study sections, filling study section vacancies and appointing new members and chairpersons, orient new reviewers to peer review processes; (4) advises Agency staff on peer review processes and grant solicitations; (5) keeps abreast of departmental, especially NIH, policies and procedures regarding peer review to assure compatibility of AHRQ processes; (6) interacts with the health services research community and keeps abreast of emergent research developments as they relate to review planning; (7) establishes and maintains continuous quality monitoring and improvement activities; and (8) coordinates funding meetings and relevant follow-up activities.

Division of Priority Populations Research (EPD). Coordinates, supports, manages and conducts health services research on priority populations. Specifically: (1) Advises the Agency leadership on matters pertaining to the health needs and health care of priority populations, including scientific, ethical, legal and policy issues; (2) prepares the agenda for priority populations research through the Agency's strategic planning process, needs assessment, and user input; (3) serves as an expert resource within the Agency on priority populations to assist program developments and participates in the development of policies and programs to implement the Agency's priority populations agenda; (4) fosters new knowledge, tool, and talent development related to priority populations by recommending, leading, coordinating and conducting new initiatives; (5) assists in the translation, dissemination, and application of Agency initiatives and programs to improve health care for priority populations; (6) evaluates the degree to which the Agency is meeting its goals for priority populations research; (7) provides national expertise to Agency staff and Agency partners on priority populations issues, establishing and maintaining liaison with other knowledgeable or concerned agencies, governments and organizations; (8) establishes new contacts and cultivates present ones with external groups (a) To spur increased awareness and emphasis on priority populations within the health services research community, (b) to partner with organizations and agencies to expand research on priority populations, thereby securing additional resources for the these activities, and (c) build the research capacity on priority populations; and (9) enhances the visibility of the Agency in priority populations research.

Office of Performance, Accountability, Resources, and Technology (EQ). Directs and coordinates Agency-wide program planning and evaluation activities and administrative operations. Specifically: (1) Ensures program planning is integrated with budget formulation and performance and serves as the Agency's focal point for Government Performance and Results Act activities; (2) plans and directs financial management activities including budget formulation, presentation, and execution functions and supports linking of the budget and planning processes; (3) provides human resource consultation services regarding all aspects of personnel management, workforce planning and restructuring, and the allocation and utilization of personnel resources; (4) provides organizational and management analysis, develops operating policies and procedures, and implements and carries out Agency management programs and policies; (5) coordinates the Agency's Federal Managers' Financial Integrity Act, competitive sourcing and FAIR Act, and Privacy Act activities; (6) conducts all business management aspects of the review, negotiation, award, and administration

of Agency research grants, cooperative agreements, and contracts; (7) manages the analysis, selection, implementation, and operation of all aspects of the Agency's information technology infrastructure and telecommunication systems; (8) provides other Agency support services including the acquisition, management, and maintenance of supplies, equipment, and space.

These changes are effective upon date of signature.

Dated: July 8, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–18911 Filed 7–24–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04012]

HIV Prevention Projects; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for HIV prevention projects was published in the **Federal Register** July 10, 2003, Volume 68, Number 132, pages 41138–41147. The notice is amended as follows:

On page 41140, first column, Section ''F. Application Content,'' first paragraph, insert the following, ''Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. Proactively obtaining a DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003. To obtain a DUNS number, access the following Web site: *www.dunandbradstreet.com* or call 1–866–705–5711.

Dated: July 21, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–18954 Filed 7–24–03; 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: Research To Improve Smoke Alarm Maintenance and Function, Program Announcement 03100; Correction

Summary: This notice was published in the **Federal Register** on July 11, 2003, Volume 68, Number 133, Page 41374. The meeting date, time, and location have been revised.

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): Research to Improve Smoke Alarm Maintenance and Function, Program Announcement 03100.

Action: The meeting times and dates have been revised as follows:

Times and Dates: 10 a.m.–10:15 a.m., July 28, 2003 (Open); 10:15 a.m.–4 p.m., July 28, 2003 (Closed).

Place: Teleconference Number 1–800–988–9352 passcode Unintentional for the Open portion of the meeting.

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.

Note: Due to administrative delays, this corrected **Federal Register** Notice is being published less than 15 days before the date of the meeting.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 03100.

Contact Person for More Information: Jean Langlois, Sc.D., Epidemiologist, Division of Injury and Disability Outcomes and Programs, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Atlanta, GA 30341; telephone 770.488.1478.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 22, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19054 Filed 7–23–03; 10:54 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3124–WN]

Medicare Program; Withdrawal of Medicare Coverage of Multiple-Seizure Electroconvulsive Therapy, Electrodiagnostic Sensory Nerve Conduction Threshold Testing, and Noncontact Normothermic Wound Therapy

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces our decisions previously set forth in program instructions to withdraw Medicare coverage for multiple-seizure electroconvulsive therapy (sometimes referred to as multiple electroconvulsive therapy), electrodiagnostic sensory nerve conduction threshold testing, and noncontact normothermic wound therapy.

DATES: This notice provides **Federal Register** confirmation of the coverage withdrawals previously published as program instructions effective April 1, 2003, for multiple-seizure electroconvulsive therapy, October 1, 2002, for electrodiagnostic sensory nerve conduction threshold testing, and July 1, 2002, for noncontact normothermic wound therapy.

FOR FURTHER INFORMATION CONTACT: Anthony Norris (410–786–8022) for multiple-seizure electroconvulsive therapy. Lorrie Ballantine (410–786–7543) for electrodiagnostic sensory nerve conduction threshold testing and noncontact normothermic wound therapy.

SUPPLEMENTARY INFORMATION: On April 27, 1999, we published a notice in the **Federal Register** (64 FR 22619) that established the procedures used for making national coverage determinations (NCDs). The April 27, 1999 notice also described the procedures we used to implement NCDs. In the notice we stated that if we chose to ''withdraw or reduce coverage

for a service,'' we would publish the decision as a general notice in the **Federal Register** (64 FR 22624).

Multiple-seizure electroconvulsive therapy (MECT), sensory nerve conduction threshold testing (sNCT), and noncontact normothermic wound therapy (NNWT) did not have NCDs governing Medicare coverage prior to the effective dates noted above. Therefore, coverage for each of these services was at the discretion of the local Medicare contractor.

This notices restates our previous decisions, announced in program instructions, to withdraw coverage nationally for multiple-seizure electroconvulsive therapy (CR 2499, TR AB–03–003, 01/10/03), electrodiagnostic sensory nerve conduction threshold testing (CR 2153, TR AB–02–066, 05/02/02), and noncontact normothermic wound therapy (CR 2027, TR AB–02–025, 02/15/02). Medicare has not covered multiple-seizure electroconvulsive therapy, electrodiagnostic sensory nerve conduction threshold testing, and noncontact normothermic wound therapy as of the effective dates noted above.

Multiple-Seizure Electroconvulsive Therapy (MECT)

We have examined the medical and scientific evidence as well as the additional information obtained as a result of our own investigation. We have determined that the available evidence is adequate to conclude that MECT may pose additional safety risks over conventional electroconvulsive therapy (ECT) for patients with affective disorders or other psychiatric disorders without a balancing clinical benefit.

We have also found that the available evidence, limited to case reports, is not adequate to conclude that non-routine use of MECT is warranted for medical conditions such as neuroleptic malignant syndrome and intractable seizures that do not respond to other therapies.

Therefore, MECT (including the practice of routinely initiating treatment with double-seizure ECT) is considered not reasonable and necessary for the treatment of psychiatric and non-psychiatric conditions in the Medicare population.

Sensory Nerve Conduction Threshold Testing (sNCT)

The available scientific evidence is not adequate to demonstrate the accuracy of sNCT or the accuracy of sNCT as compared to nerve conduction studies (NCS). Unlike NCS, sNCT does not assess the integrity of motor nerves, which is important in evaluating some patient populations, such as diabetics. In addition, it is not evident that sNCT offers any diagnostic advantages over a history and physical examination in detecting the presence of a neuropathy. There are also no clinical studies that we identified that demonstrate that the use of sNCT leads to changes in patient management in a particular Medicare subpopulation. As stated in 42 CFR 410.32, a diagnostic test is not reasonable and necessary unless its results are used by the treating physician (who also orders the test) in the management of the beneficiary's specific medical problem.

In our discussions with experts, we were also unable to identify a subpopulation with whom the results of sNCT would alter medical care. We conclude that the scientific and medical literature does not demonstrate that the use of sNCT to diagnose sensory neuropathies in Medicare beneficiaries is reasonable and necessary.

Noncontact Normothermic Wound Therapy (NNWT)

The medical literature does not support a finding that NNWT heals any wound type better than conventional treatment. While the submitted studies support better healing, due to serious methodological weaknesses, inadequate controls, and a variety of biases, the improved outcomes could also easily disappear in a properly controlled randomized trial.

We have decided to issue a national noncoverage policy for all uses of NNWT for the treatment of wounds because the medical literature is not sufficient to support a NCD.

For complete decision memoranda providing the rationale for these withdrawals, please refer to *http://www.cms.gov/ncdr/ncdr_index.asp* on the Internet and scroll down to the appropriate topic under completed determinations.

Authority: Sections 1862, 1869(b)(3), and 1871 of the Social Security Act (42 U.S.C. 1395y, 1395ff(b)(3), and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 30, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–18858 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1260–N]

Medicare Program; Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—August 22, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), this notice announces the second biannual meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2003.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. The advice provided by the Panel will be considered as CMS prepares its annual updates of the hospital outpatient prospective payment system (OPPS) through rulemaking.

DATES: The second biannual meeting for 2003 is scheduled for Friday, August 22, 2003, from 8 a.m. to 5 p.m. (e.d.t.).

ADDRESSES: The meeting will be held in the Multipurpose Room, 1st Floor, at the CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For copies of the charter, for inquiries regarding these meetings, for meeting registration, and for submitting oral presentations or written agenda items, contact Shirl Ackerman-Ross, the meeting coordinator and Designated Federal Official, CMS, Center for Medicare Management, Hospital Ambulatory Policy Group, Division of Outpatient Care, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850 or phone (410) 786–4474. Also, please refer to the CMS Advisory Committees' Information Line at 1–877–449–5659 (toll free) and (410) 786–9379 (local).

For additional information on the APC meeting agenda topics and/or updates to the Panel's activities, search our Internet Web site: *http://www.cms.hhs.gov/faca/apc/default.asp.*

To submit a request for a copy of the charter, search the Internet at *http://*

www.cms.hhs.gov/faca or e-mail *SAckermannross@cms.hhs.gov.*

Written materials may also be sent electronically to *outpatientpps@cms.hhs.gov.*

News media representatives should contact our Public Affairs Office at (202) 690–6145.

Background

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act), as amended by section 201(h)(1)(B) and redesignated by section 202(a)(2) of the Balanced Budget Refinement Act (BBRA) of 1999 (Pub. L. 106–113), to establish and consult with an expert, outside advisory panel on Ambulatory Payment Classification (APC) groups. The Advisory Panel on Ambulatory Payment Classification Groups (the Panel) meets up to three times annually to review the APC groups and to provide technical advice to the Secretary and to the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the groups and their associated weights. We will consider the technical advice provided by the Panel as we prepare the proposed rule that proposes changes to the Outpatient Prospective Payment System (OPPS) for the next calendar year.

The Panel may consist of up to 15 representatives of Medicare providers that are subject to the OPPS and a Chair. The Administrator selected the Panel membership based upon either self-nominations or nominations submitted by providers or organizations.

The Panel presently consists of the following members and a Chair: Paul Rudolf, M.D., J.D., Chair, a CMS medical officer; Geneva Craig, R.N., M.A.; Lora DeWald, M.Ed.; Robert E. Henkin, M.D.; Stephen T. House, M.D.; Kathleen Kinslow, C.R.N.A., Ed.D.; Mike Metro, R.N., B.S.; Gerald V. Naccarelli, M.D.; and Beverly K. Philip, M.D.

The new members recently appointed to the Panel are: Marilyn Bedell, M.S., R.N., O.C.N.; Albert Brooks Einstein, Jr., M.D.; Lee H. Hilborne, M.D., M.P.H. (reappointment); Frank G. Opelka, M.D., F.A.C.S.; Lynn R. Tomascik, R.N., M.S.N., C.N.A.A.; Timothy Gene Tyler, Pharm.D.; and William Van Decker, M.D. (reappointment).

The agenda for the August 2003 meeting will provide for discussion and comment on the following topics:

- Reconfiguration of APCs (for example, splitting of APCs, moving Healthcare Common Procedure Coding System (HCPCS) codes from one APC to another, and moving HCPCS codes from New Technology APCs to Clinical APCs).
- Evaluation of APC weights.
- Packaging devices and drug costs into APCs: methodology, effect on APCs, and need for reconfiguring APCs based upon device and drug packaging.
- Removal of procedures from the inpatient list for payment under the OPPS.
- Use of single and multiple procedure claims data.
- Packaging of HCPCS codes.
- Other technical issues concerning APC structure.

We are soliciting comments from the public on specific proposed items falling within these agenda topics for the August 2003 Panel meeting. We will consider agenda topics for this meeting if they are submitted in writing and fall within the agenda topics listed above. We urge those who wish to comment to send comments as soon as possible, but no later than 5 p.m. (e.d.t.) on Thursday, August 14, 2003.

The meeting is open to the public, but attendance is limited to the space available. Individuals or organizations wishing to make 5-minute oral presentations should contact the meeting coordinator by 5 p.m. (e.d.t.) on Thursday, August 14, 2003, in order to be scheduled. The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes.

Persons wishing to present must submit a copy of the presentation and the name, address, and telephone number of the presenter. In addition, all presentations must contain, at a minimum, the following supporting information and data:

- The presenter's financial relationship(s), if any, with any company whose products, services, or procedures are under consideration.
- Physicians' Current Procedural Terminology (CPT) codes involved.
- APC(s) affected.
- Description of the issue(s).
- Clinical description of the service under discussion (with comparison to other services within the APC).
- Recommendations and rationale for change.
- Expected outcome of change and potential consequences of not making the change.

Submit a written copy of the oral remarks or written agenda items to the meeting coordinator listed above or electronically to the address: *outpatientpps@cms.hhs.gov.* Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission and cannot acknowledge or respond individually to comments we receive.

In addition to formal presentations, there will be an opportunity during the meeting for public comment, limited to 1 minute for each individual or organization.

Persons wishing to attend this meeting, which is located on Federal property, must call the meeting coordinator, Shirl Ackerman-Ross, at (410) 786–4474, to register in advance no later than Thursday, August 14, 2003. Persons attending must present a photographic identification to the Federal Protective Service or Guard Service personnel before they will be allowed to enter the building.

Persons who are not registered in advance will not be permitted into the building and will not be permitted to attend the meeting.

A member of our staff will be stationed at the Central Building, first-floor lobby, to provide assistance to attendees. Please remember that all visitors must be escorted if they have business in areas other than the lower and first floor levels in the Central Building. Parking permits and instructions are issued upon arrival by the guards at the main entrance.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations should send a request for these services to the meeting coordinator by Thursday, August 14, 2003.

Authority: Section 1833(t) of the Act (42 U.S.C. 1395l(t), as amended by section 201(h) of the BBRA of 1999 (Pub. L. 106–113). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 11, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–18857 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3117–N]

Medicare Program; Meeting of the Medicare Coverage Advisory Committee—September 9, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Medicare Coverage Advisory Committee (the Committee). The Committee provides advice and recommendations to us about clinical issues. The Committee advises us on whether adequate evidence exists to determine whether specific medical items and services are reasonable and necessary under the Medicare statute. The Committee will discuss and make recommendations concerning the quality of the evidence and related issues for the use of ocular photodynamic therapy (OPT) with verteporfin in routine clinical use in the population of Medicare beneficiaries who have age-related macular degeneration (AMD) and occult with no classic choroidal neovascularization (CNV). Notice of this action is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: The public meeting announced will be held on Tuesday, September 9, 2003 from 7:30 a.m. until 3:30 p.m., e.d.t.

Deadline for Presentations and Comments: Interested persons may present data, information, or views orally or in writing, on issues pending before the Committee. Written presentations and comments must be submitted to the Executive Secretary, Michelle Atkinson, by telephone at 410–786–2881 or by e-mail at *matkinson@cms.hhs.gov* by August 21, 2003, 5 p.m., e.d.t.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by August 21, 2003 (*see* **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The meeting will be held at the Holiday Inn Inner Harbor, Room: Harbor 1, 12th floor, 301 West Lombard Street, Baltimore, MD 21201. Refer to Medicare Coverage Advisory Committee meeting if making reservations through the Holiday Inn Inner Harbor.

Presentations and Comments: Submit formal presentations and written comments to Michelle Atkinson by telephone at 410–786–2881, by e-mail at *matkinson@cms.hhs.gov*, or by mail to the Executive Secretary, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C1–09–06, Baltimore, MD 21244.

Web site: You may access up-to-date information on this meeting at *http://www.cms.gov/coverage*.

Hotline: You may access up-to-date information on this meeting on the CMS Advisory Committee Information Hotline, 1–877–449–5659 (toll free), or in the Baltimore area, (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Michelle Atkinson, Executive Secretary, by telephone at 410–786–2881, or by email at *matkinson@cms.hhs.gov*

SUPPLEMENTARY INFORMATION: On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (the Committee), which provides advice and recommendations to us about clinical issues. This notice announces the following public meeting of the Committee.

Meeting Topic: The Committee will discuss the evidence, hear presentations and public comment, and make recommendations regarding the use of ocular photodynamic therapy (OPT) with verteporfin in routine clinical use in the population of Medicare beneficiaries who have age-related macular degeneration (AMD) and occult with no classic choroidal neovascularization (CNV). Background information about this topic, including panel materials, is available on the Internet at *http://www.cms.gov/coverage*.

Procedure and Agenda: This meeting is open to the public. The Committee will hear oral presentations from the public. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section, and submit the following by August 21, 2003, 5 p.m., e.d.t.: A brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to each Panel member before offering your public comments. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and the CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow an unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Committee will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 16, 2003.

Steve Phurrough,

Acting Director, Coverage and Analysis Group, Office of Clinical Standards and Quality, Chief Medical Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 03–18993 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14496]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 1625–0063 (formerly 2115–0586), 1625–0014 (formerly 2115–0053), 1625–0009 (formerly 2115–0025), and 1625–0002 (formerly 2115–0007)

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the four Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 25, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–14496] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. 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)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a website on which you can post your comments.

(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 (Plaza level), 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 for inspection and copying in public dockets. They are available in docket USCG 2003–14496 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov*; and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 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–2003–14496], 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 in 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.*

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (68 FR 8324, February 20, 2003) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–14496. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Marine Occupational Health and Safety Standards for Benzene—46 CFR Part 197, Subpart C.

OMB Control Number: 1625–0063.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Form: This collection of information does not require the public to fill out forms, but does require that information collected be maintain and made available for Coast Guard inspection.

Abstract: To protect marine workers from exposure to toxic benzene vapor, the Coast Guard implemented 46 CFR Part 197, Subpart C.

Annual Estimated Burden Hours: The estimated burden is 59,766 hours a year.

2. *Title:* Request for Designation and Exemption of Oceanographic Research Vessels.

OMB Control Number: 1625–0014.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners or operators of vessels.

Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.

Abstract: 46 U.S.C. 2113 authorizes the Secretary of Transportation to exempt Oceanographic Research Vessels, by rule, from certain parts of Subtitle II of Title 46, Shipping, of the United States Code, concerning vessels and seamen. This information is necessary to ensure that a vessel qualifies for exemption.

Annual Estimated Burden Hours: The estimated burden is 21 hours a year.

3. *Title:* Oil Record Book for Ships.

OMB Control Number: 1625–0009.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of vessels.

Form: CG–4602A.

Abstract: The Act to Prevent Pollution from Ships (APPS) and the International Convention for Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78), require the entry into an Oil Record Book (CG–4602A) of information about oil carried as cargo or fuel. The maintenance of the Book constitutes the collection of information. The requirement for it appears at 33 CFR 151.25.

Annual Estimated Burden Hours: The estimated burden is 29,048 hours a year.

4. *Title:* Application for Vessel Inspection and Waiver.

OMB Control Number: 1625–0002.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners, operators, agents, or masters of vessels, or interested Federal agencies.

Form: CG–2633 and CG–3752.

Abstract: The collection of information requires the owner, operator, agent, or master of a vessel to apply in writing to the Coast Guard before the commencement of the inspection for certification, or when, in the interest of national defense, a waiver from the requirements of navigation and vessel inspection seems desirable

Annual Estimated Burden Hours: The estimated burden is 677 hours a year.

Dated: July 17, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–18922 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 17, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–18620 Filed 7–24–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Second Information Request for the 5-Year Reviews of the Marbled Murrelet (*Brachyramphus marmoratus marmoratus*) and the Northern Spotted Owl (*Strix occidentalis caurina*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Second information request for northern spotted owl and marbled murrelet 5-year reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a second request for information for the 5-year reviews of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) and the northern spotted owl (*Strix occidentalis caurina*) under section 4(c)(2)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act). The first request for information closed June 20, 2003. We are announcing this second request to allow the public additional time to provide information for these reviews. We are again requesting submission of any new information (best scientific and commercial data) on the marbled murrelet and the northern spotted owl that has become available since their original listings in 1992 and 1990, respectively. If the present classification of each of these species is not consistent with the best scientific and commercial information available, we may, at the conclusion of these reviews, initiate a separate action to propose changes to the List of Endangered and Threatened Wildlife and Plants (List) accordingly.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than August 20, 2003. We want to emphasize that the timely submission of information is critical to ensure its use in these 5-year reviews.

ADDRESSES: Submit information to the Field Office Supervisor, Attention Owl and Murrelet 5-year Review, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. Information received in response to this notice and the results of these reviews will be available for public inspection by appointment, during normal business hours, at the above address. New information regarding the northern spotted owl may be sent electronically to *owl_information@r1.fws.gov*. New information regarding the marbled murrelet may be sent electronically to *murrelet_information@r1.fws.gov*.

FOR FURTHER INFORMATION CONTACT: For the marbled murrelet, contact Lee Folliard at the above address, or at 503/231–6179. For the northern spotted owl, contact Robin Bown at the above address, or at 503/231–6179.

SUPPLEMENTARY INFORMATION: Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. The purpose of a 5-year review is to ensure that the classification of a species as threatened or endangered on the List is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review that has become available since the species' original listing or its most recent status or 5-year review.

On April 21, 2003, we announced in a **Federal Register** notice (68 FR 19569) that we are commencing 5-year reviews of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) and the northern spotted

owl (*Strix occidentalis caurina*). We are conducting the reviews for these two species in connection with the January 13 and 14, 2003, settlement agreements for two lawsuits, *Western Council of Industrial Workers* v. *Secretary of the Interior*, Civil No. 02–6100–AA (D. Or.) and *American Forest Resources Council* v. *Secretary of the Interior*, Civil No. 02–6087–AA (D. Or.). The public comment period for the April 21, 2003, notice ended June 20, 2003. However, to allow additional time for the public to submit information, amendments to the settlement agreements were filed on June 30, 2003, with the District Court in Oregon extending the deadlines for completing the reviews. In accordance with the amended settlement agreements, we are reopening the public comment periods on these reviews until August 20, 2003.

The 5-year reviews for these two species will assess: (a) Whether new information suggests that the species' populations are increasing, declining, or stable; (b) whether existing threats are increasing, the same, reduced, or eliminated; (c) if there are any new threats; and (d) if new information or analysis calls into question any of the conclusions in the original listing determinations as to the species' status. The reviews will also apply this new information to consideration of the appropriate application of the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722) to the listed entity, if applicable.

If there is no new information concerning the marbled murrelet or northern spotted owl, no changes will be made to their classifications. However, if we find that there is new information concerning the marbled murrelet or northern spotted owl indicating a change in classification is warranted, we may propose new rules that could either: (a) Reclassify the species from threatened to endangered; or (b) remove the species from the List.

Public Solicitation of New Information

We are publishing this second request for any new information relating to the current status of the northern spotted owl and marbled murrelet that has become available since their original listing. In particular, we are seeking information such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends; and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, or improved analytical methods.

Specifically for the spotted owl and murrelet we are interested in new information, analyses, and/or reports for these species that summarize and interpret their population status and related threats. The reviews will consider information such as: Population and demographic trend data; studies of dispersal and habitat use; genetics and species competition investigations; surveys of habitat amount, quality, and distribution; adequacy of existing regulatory mechanisms; and management and conservation planning information. We request this information for all applicable land ownerships within the range of both species.

Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Authority: This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 16, 2003.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–19039 Filed 7–22–03; 4:48 pm]

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 Hyundai Motor America Automotive Test Track Project in Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Hyundai Motor America (HMA) and the City of California City (collectively Applicants) have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service is considering issuing a 30-year permit to the Applicants that would authorize take of the threatened desert tortoise (Gopherus agassizii) incidental to otherwise lawful activities associated with the construction and operation of a proposed automotive test track project on 4,340 acres in Kern County, California. With the access road from the south and access road/waterline from the east, the project would result in the permanent removal of approximately 4,368.5 acres of occupied desert tortoise habitat, relocation of desert tortoises currently occupying the site, and acquisition of 3,228.5 acres of higher quality desert tortoise habitat. Desert tortoise impacts to 1,140 acres on the project site previously were compensated under a federal land exchange, the West Mojave Land Tenure Adjustment Act.

We request comments from the public on the proposed Habitat Conservation Plan (Plan), Environmental Assessment, and Implementing Agreement, which are available for review. The Plan describes the proposed action and the measures that the Applicant will undertake to minimize and mitigate take of the desert tortoise. 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 23, 2003.

ADDRESSES: Please address written comments to Field Supervisor, Ventura Fish and Wildlife Office, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You also may send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, Ventura Fish and Wildlife Office, Barstow Sub-office; (760) 255–8890.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office, or by making an appointment to view the documents at the above address during normal business hours (**FOR FURTHER INFORMATION CONTACT**). Documents also will be available for public inspection, on our Web site at *http://ventura.fws.gov.,* and during regular business hours at the California City Library, 9507 California City Boulevard, California City, California.

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 and endangered species are found in 50 CFR 17.32 and 17.22.

The Applicants are proposing to construct an automotive test track facility and associated water line and access roads to evaluate the safety, performance and handling of concept, prototype and production automobiles to be manufactured at HMA's automotive assembly and manufacturing plant currently under construction in Birmingham, Alabama. HMA proposes to construct the facility on 4,340 acres located approximately 60 miles southeast of Bakersfield, California, 9 miles east of the community of Mojave, California and 0.5 mile north of State Highway 58 in Kern County, California. The proposed project is located in the west Mojave Desert. The proposed facility will consist of a 6-mile long oval test course, two access roads, a winding track, a vehicle dynamics area, a hill-up road, a straight stability road, a support building and parking lot and perimeter fencing. The proposed project includes installation of desert tortoise exclusion fencing around the 4,340-acre site perimeter and removal and relocation of desert tortoises from the site. The project also includes an off-site access road from State Highway 58 that will remove 8.5 acres of desert tortoise habitat. Finally, the City of California City proposes to build a 2-mile water line extension and widen Joshua Tree Boulevard to serve the project, which will result in adverse effects to 20 acres of desert tortoise habitat.

The 4,340-acre project site includes 1,140 acres that were part of the Western Mojave Land Tenure Adjustment (LTA) Project, a land exchange program between private parties and the U.S. Bureau of Land Management (BLM). Pursuant to a Biological Opinion issued by the Service to BLM on January 8, 1998, (6844440 (CA–063.50) (1–8–98–F–60R)), any proposed take of desert tortoise on the 1,140 acres must be authorized by the Service, but no further mitigation is required for take of the desert tortoise or impacts to its habitat.

The project site is classified by BLM as Category III habitat for desert tortoise and is occupied by desert tortoise. Category III habitat is defined as areas that are not essential to maintenance of viable populations, that contain low to medium densities, and that are not contiguous with medium- or high-density areas and in which the population is stable or decreasing. The proposed project site supports three common Mojave Desert plant communities—desert saltbush scrub, Mojave creosote bush scrub, and Joshua tree woodland. Past and current grazing of domestic sheep has degraded the site. Field survey observations also documented signs of human disturbance, including approximately 60 acres of unimproved roads, scattered shotgun shells and bullet casings, trash, and abandoned campsites and automobiles. Signs of historical military use also are found throughout the site, including ammunition casings and at least one aircraft crash site.

During directed surveys in March and April 2002, three live desert tortoises were observed on the proposed development site. An additional survey performed in May 2003 observed 8 live tortoises. Construction of the proposed project is anticipated to directly affect 834.5 acres of occupied desert tortoise habitat. In addition, the 4,340-acre site will no longer be accessible to desert tortoise due to installation of desert tortoise exclusion fencing around the perimeter of the site. The State Highway 58 access road will remove 8.5 acres of desert tortoise habitat, and the City water line extension and Joshua Tree Boulevard road access will adversely affect 20 acres of desert tortoise habitat. Impacts to 1,140 acres on the project site already have been mitigated pursuant to the LTA 1998 Biological Opinion. The Applicants propose to mitigate for the remaining desert tortoise impacts by acquiring 3,228.5 acres of higher quality desert tortoise habitat in an area adjacent to the Desert Tortoise Natural Area and translocating desert tortoises from the Hyundai site to a location that will be managed for the desert tortoise. Based on the survey results and habitat impacts, the Service concluded that implementation of the proposed project likely will result in take of less than 40 desert tortoises due to their translocation from the project site.

The Service's Environmental Assessment considers the environmental consequences of five alternatives, including: (1) The No Action Alternative, which consists of no permit issuance and no development on the Hyundai property at this time; (2) the On-Site Fencing Alternative, which consists of installing desert tortoise exclusion fencing around the test track and other features on the Hyundai property and moving tortoises outside the exclusion fence to adjacent areas on the Hyundai property; (3) the San Bernardino County Automotive Test Course Site, which consists of locating the project to a site within San Bernardino County; (4) the Riverside County Automotive Test Course Site, which consists of locating the project to a site within Riverside County; and (5) the Proposed Action, which consists of installing desert tortoise exclusion fence around the perimeter of the Hyundai property and relocating all desert tortoises to an off-site location. Except for the No Action Alternative, the alternatives to the Proposed Action would adversely affect more federally listed species than the Proposed Action Alternative.

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 Applicants for the incidental take of the desert tortoise.

Dated: July 18, 2003.

D. Kenneth McDermond,

Manager, California/Nevada Operations Office, Sacramento, California

[FR Doc. 03–18925 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–XP]

Notice of Public Meetings; Western, Central, Eastern Montana, and Dakotas Resource Advisory Council Meetings; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western, Central, and Eastern Montana, and the

Dakotas Resource Advisory Councils will meet as indicated below.

DATES: The Western Montana RAC meeting will be held September 10, 2003, at the Search and Rescue Building in Dillon, Montana, beginning at 10 a.m. The public comment period on Sustaining Working Landscapes (SWL) and other topics will begin at 1 p.m. and the meeting is expected to adjourn by 3 p.m. Also on the agenda will be information about the Montana/Dakotas Off-Highway Vehicle policy.

The Central Montana RAC will meet September 23–25, 2003, at the Agricultural Museum in Fort Benton, Montana. The RAC members will tour the Missouri River on September 23. The meeting will convene at 8 a.m. on September 24. Public comment periods on SWL and other topics are scheduled for that day from 12–12:30 p.m. and 4–5 p.m. Another public comment session is scheduled for 8 a.m.-8:30 a.m. on September 25. The meeting should adjourn at 12:45 p.m. on September 25. Also on the agenda will be information about the Montana/Dakotas Off-Highway Vehicle policy and the Blackleaf EIS.

The Eastern Montana RAC will meet August 14, 2003, at 8 a.m. in Billings, Montana, at the Hampton Inn. The public comment period on SWL and other topics will begin at 2 p.m., and the meeting will adjourn at about 3:30 p.m. Also on the agenda will be information about the Montana/Dakotas Off-Highway Vehicle policy.

The Dakotas RAC will meet September 3, 2003, at 2 p.m. at the Golden Hills Resort Best Western, in Lead, South Dakota, to tour Grizzly Gulch fire rehabilitation and monitoring. The meeting will resume at 8 a.m. on September 4, 2003, at the Golden Hills Resort Best Western. Sustaining Working Landscapes and other topics, including the Montana/Dakotas Off-Highway Vehicle policy, will be discussed with public comment taken on those and other issues beginning at 2 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana and the Dakotas. At these four meetings, the Councils will accept public comment on the SWL initiative and possibly develop recommendations on the same for the consideration of the Montana/Dakotas State Director.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, MT 59701, telephone 406–533–7617, or Tim Bozorth, Field Manager, at the Dillon Field Office, 1005 Selway Drive, Dillon, MT 59725, telephone 406–683–2337.

For the Central Montana RAC, contact David L. Mari, Lewistown Field Manager, at the Lewistown Field Office, P.O. Box 1160, Airport Road, Lewistown, MT 59457, 406–538–7461.

For the Eastern Montana RAC, contact Mark Jacobsen, Resource Advisory Council Coordinator, at the Miles City Field Office, 111 Garryowen Road, Miles City, MT 59301, 406–233–2831.

For the Dakotas RAC, contact Doug Burger, North Dakota Field Manager, at the North Dakota Field Office, 2933 Third Avenue West, Dickinson, ND 58601, 701–227–7700.

Dated: July 17, 2003.

A. Jerry Meredith,

Associate State Director, Montana State Office.

[FR Doc. 03–18956 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–5882–AF; HAG03–0236]

Notice of Public Meeting, Roseburg Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of meetings for the Roseburg District Bureau of Land Management (BLM) Resource Advisory Committee under section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Roseburg District BLM Resource Advisory Committee pursuant to section 205 of the Secure Rural School and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Roseburg District BLM Resource Advisory Committee include specific information of specific projects and/or decisions on specific projects.

DATES: The Roseburg Resource Advisory Committee was scheduled to meet at the BLM Roseburg District Office, 777 NW. Garden Valley Boulevard, Roseburg, Oregon 97470 on July 21, July 28, and August 4, 2003 from 9 a.m. to 4 p.m. These meetings have been canceled. For briefing information please refer to HAG–03–0134.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM district that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with Federal land management activities in the selection of projects to be conducted on Federal lands or that will benefit resources on Federal lands using funds under Title II of the Act. The Roseburg District BLM Resource Advisory Committee consists of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Roseburg District BLM Resource Advisory Committee may be obtained from E. Lynn Burkett, Public Affairs Officer, Roseburg District Office, 777 NW. Garden Valley Blvd., Roseburg, Oregon 97470 or *elynn_burkett@blm.gov*, or on the Web at *http://www.or.blm.gov.*

Dated: July 18, 2003.

Gail S. Schaefer,

Acting Roseburg District Manager.

[FR Doc. 03–18958 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents. Prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice dated August 13, 2002.

Activity/Operator	Location	Date
Kerr McGee Oil & Gas Corporation, Development Operations Coordination Plan and Lease-Term Pipeline, PEA No. N–7625 and Segment No. P–14109.	Garden Banks Area, Blocks 667, 668 and 669, Leases OCS–G 17406, 17407 and 17408, respectively, located 117.5 miles from the nearest Texas shoreline.	04/02/03
BP Exploration & Production, Inc., Development Operations Coordination Plan, SEA No. N–7646.	Green Canyon Area, Blocks 742, 743, 744, 787 and 788, Leases OCS–G 15606, 15607, 15608, Unleased and Unleased, respectively, located 122 miles from the nearest Louisiana shoreline.	04/25/03
Fugro Geoservices, Inc. for BP America, Inc., Geological and Geophysical Exploration Plan, SEA No. L03–17.	Located in the Central Gulf of Mexico southeast of Patterson, Louisiana.	05/02/03
Anadarko Petroleum Corporation, Initial Exploration Plan, SEA No. N–7686.	DeSoto Canyon Area, Block 621, Lease OCS–G 23529, located 95.5 miles from the nearest Louisiana shoreline.	05/05/03
Shell Offshore, Inc., Initial Exploration Plan, SEA No. N–7698 ...	Lloyd Ridge Area, Block 399, Lease OCS–G 23480, located 128 miles from the nearest Louisiana shoreline.	05/07/03
Anadarko Petroleum Corporation, Initial Exploration Plan, SEA No. N–7713.	Lloyd Ridge Area, Blocks 265 and 309, Leases OCS–G 03472 and 03473, respectively, located 120 miles from the nearest Louisiana shoreline.	05/07/03
Amerada Hess Corporation, Initial Exploration Plan, SEA No. N–7672.	DeSoto Canyon Area, Block 620, Lease OCS–G 23528, located 93 miles from the nearest Louisiana shoreline.	05/21/03
W & T Inc., Right-of-Way Pipeline Application, SEA No. P–14037.	Offshore, Garden Banks Area, Block 139, Lease OCS–G 17295 to High Island Area, Block A389, Lease OCS–G 02759, located 123 miles from the nearest Louisiana shoreline.	05/30/03
Endymion Oil Pipeline Company, LLC, Right-of-Way Pipeline Application, SEA No. P–13534.	South Pass Area, Block 89, to traverse through Federal waters in South Pass Block 88, West Delta Blocks 145, 128, 129, 126, 125, 112, 113, 104, 103, 91, 92, 93, 72, 71, 66, 67, 39 and 38, and Grand Isle Blocks 20, 19 and 18, and continue through Louisiana State waters to Louisiana Offshore Oil Port near Clovelly, Louisiana, length through Federal waters is 46 miles and total length in offshore waters is 54 miles.	05/29/03
Anadarko Petroleum Corporation, Initial Exploration Plan, SEA No. N–7751.	Lloyd Ridge Area, Blocks 47, 91 and 135, located 111 miles from the nearest Louisiana shoreline.	06/17/03
ATP Oil & Gas Corporation, Structure Removal Activity, SEA ES/SR Nos. 03–010 and 03–011.	Vermilion Area (South Addition), Block 389, Lease OCS–G 14430, and Block 410, Lease OCS–G 11903, located 109–110 miles south of Cameron, Louisiana, and 129–131 miles south-southeast of Cameron Parish, Louisiana.	02/04/03
WesternGeco for Exxon Mobil Production Company, Geological & Geophysical Exploration, SEA No. L03–12.	Located in the central Gulf of Mexico southeast of Fourchon, Louisiana.	03/31/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration, SEA No. L03–13.	Located in the central Gulf of Mexico southeast of Fourchon, Louisiana, and New Orleans, Louisiana.	04/15/03
Energy Resource Technology, Inc., Structure Removal Activity, SEA ES/SR No. 03–067.	South Timbalier Area, Block 213, Lease OCS–G 18055, located 50 miles from the nearest Louisiana shoreline.	04/07/03
Energy Resource Technology, Inc., Structure Removal Activity, SEA ES/SR No. 03–068.	West Cameron Area, Block 277, Lease OCS–G 04761, located 60 miles from the nearest Louisiana shoreline.	04/07/03
Petrobras America, Inc., Structure Removal Activity, SEA ES/SR No. 03–069.	Ship Shoal Area, Block 301, Lease OCS–G 10794, located 57 miles from the nearest Louisiana shoreline.	05/06/03
Anadarko E & P Company, LP, Structure Removal Activity, SEA ES/SR No. 03–070.	Eugene Island Area, Block 296, Lease OCS–G 02105, located 61 miles from the nearest Louisiana shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–071.	Vermillion Area, Block 68, Lease OCS–G 08662, located 15 miles from the nearest Louisiana shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–072.	East Cameron Area, Block 152, Lease OCS–G 17849. located 44 miles from the nearest Louisiana shoreline.	05/06/03

Activity/Operator	Location	Date
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–073.	Galveston Area, Block 283, Lease OCS–G 09039, located 15 miles from the nearest Texas shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–074.	Galveston Area, Block 393, Lease OCS–G 15761, located 22 miles from the nearest Texas shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–07, 03–076 and 03–077.	Brazos Area, Block 399, Lease OCS–G 07218, located 14 miles from the nearest Texas shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–078.	Brazos Area, Block 432, Lease OCS–G 09018, located 20 miles from the nearest Texas shoreline.	05/06/03
Amerada Hess Corporation, Structure Removal Activity, SEA ES/SR No. 03–080.	West Cameron Area, Block 505, Lease OCS–G 16200, located 97 miles from the nearest Texas shoreline.	05/03/03
Amerada Hess Corporation, Structure Removal Activity, SEA ES/SR No. 03–081 and 03–082.	West Cameron Area, Block 556, Lease OCS–G 05346, located 97 miles from the nearest Texas shoreline.	05/06/03
Amerada Hess Corporation, Structure Removal Activity, SEA ES/SR No. 03–083.	Galveston Area, Block 210, Lease OCS–G 07236, located 97 miles from the nearest Texas shoreline.	05/06/03
Hunt Oil Company, Structure Removal Activity, SEA ES/SR No. 03–087, 03–088, 03–089, 03–090 and 03–091.	South Pass Area, Block 37, Leases OCS–G 01335 and OCS 00697, located 6–8 miles east-southeast of Plaquemines Parish, Louisiana shoreline.	04/15/03
ATP Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 03–092.	South Timbalier Area, Block 30, Lease OCS–G 13928, located 7 miles south of LaFourche Parish, Louisiana shoreline.	04/14/03
J. M. Huber Corporation, Structure Removal Activity, SEA ES/SR No. 03–093 and 03–094.	South Timbalier Area, Block 21, Lease OCS–G 00263, located 5 miles from the nearest Louisiana shoreline.	04/11/03
BP America Production Company, Structure Removal Activity, SEA ES/SR No. 03–095.	High Island Area, Block A1, Lease OCS–G 15780, located 30 miles from the nearest Louisiana shoreline.	04/14/03
Chevron U.S.A., Inc., Structure Removal Activity, SEA ES/SR No. 03–096 and 03–097.	Eugene Island Area, Block 23, Lease OCS–G 00980, located 45 miles from the nearest Louisiana shoreline.	05/16/03
Chevron U.S.A., Inc., Structure Removal Activity, SEA ES/SR No. 03–098.	Ship Shoal Area, Block 108, Lease OCS–00814, located 20 miles from the nearest Louisiana shoreline.	04/22/03
Burlington Resources offshore, Inc., Structure Removal Activity, SEA ES/SR No. 03–099.	Eugene Island Area, Block 159, Lease OCS–G 04449, located 35 miles from the nearest Louisiana shoreline.	04/16/03
Murphy Exploration & Production Company, Structure Removal Activity, SEA ES/SR No. 03–100, 03–101, 03–102, 03–103, 03–104, 03–105, 03–106, 03–107, 03–108, and 03–109.	South Pelto Area, Blocks 12 and 19, Leases OCS–G 00072 and 00073; Ship Shoal Area, Block 101, Lease OCS–G 09612; and Vermilion Area, Block 130, Lease OCS–G 16296; all located 8 to 32 miles south and southwest from the nearest Louisiana shoreline.	04/23/03
J. M. Huber Corporation, Structure Removal Activity, SEA ES/SR No. 03–110.	West Cameron Area, Block 238, Lease No. OCS–02834, located 40 miles from the nearest Louisiana shoreline.	04/23/03
TotalFinaElf E&P USA, Inc., Structure Removal Activity, SEA ES/SR No. 03–111 and 03–112.	West Cameron Area, Block 167, Lease OCS–G 09400, located 25 miles from the nearest Louisiana shoreline.	04/29/03
McMoRan Oil & Gas, Structure Removal Activity, SEA ES/SR No. 03–113.	Eugene Island Area, Block 215, Lease OCS–G 00578, located 43 miles from the nearest Louisiana shoreline.	05/06/03
W & T Offshore, Inc., Structure Removal Activity, SEA ES/SR No. 03–114.	East Cameron Area, Block 303, Lease OCS–G 12850, located 88 miles from the nearest Louisiana shoreline.	05/19/03
Spinnaker Exploration Company, LLC, Structure Removal Activity, SEA ES/SR No. 03–115—03–117.	East Cameron Area, Blocks 138 and 139, Leases OCS–G 13863 and 21576, located 45 miles from the nearest Louisiana shoreline.	05/14/03
Spinnaker Exploration Company, LLC, Structure Removal Activity, SEA ES/SR No. 03–118.	High Island Area, Block 235, Lease OCS–G 18941, located 30 miles from the nearest Louisiana shoreline.	05/16/03
Chinese Offshore Oil Geophysical Corporation for GX Technology Corporation, Geological and Geo-Physical Exploration Plan, SEA No. T03–08.	Located in the Central and Western Gulf of Mexico from south of Fourchon, Louisiana, extending offshore to northeast of Port Isabel, Texas.	05/16/03
El Paso Production Company, Structure Removal Activity, SEA ES/SR No. 97–095A.	West Cameron, (South Addition) Area, Block 498, Lease OCS–G 03520. located 92 miles from the nearest Louisiana shoreline.	05/20/03
ChevronTexaco, Structure Removal Activity, SEA ES/SR Nos. 00–1342A, 03–119, 95–049A, 07–090A, 03–120 and 03–121.	High Island Area (South Addition), Block A548, Lease OCS-G 02706; West Cameron Area, Blocks 17 and 48, Lease OCS–G 01351, located 99 miles southeast of Galveston, Texas, and 3.5 miles south of Cameron, Louisiana, respectively.	05/21/03
The William G. Helis Company, LLC, Structure Removal Activity, SEA ES/SR No. 03–122.	South Timbalier (South Addition) Area, Block 212, Lease OCS–G 14538, located 43 miles from the nearest Louisiana shoreline.	05/21/03
Forest Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03–123.	Eugene Island Area, Block 273, Lease OCS–G 00987, located 60 miles from the nearest Louisiana shoreline.	05/21/03
Chevron U.S.A., Inc., Structure Removal Activity, SEA ES/SR No. 03–124.	Eugene Island Area, Block 64, Lease OCS–G 02098, located 20 miles from the nearest Louisiana shoreline.	06/02/03
Callon Petroleum Operating Company, Structure Removal Activity, SEA ES/SR No. 03–125.	Main Pass Area, Block 161, Lease OCS–G 05703, 45 miles from the nearest Louisiana shoreline.	05/29/03
El Paso Production Oil & Gas Company, Structure Removal Activity, SEA ES/SR No. 03–126.	East Cameron Area, Block 82, Lease OCS–G 08640, located 28 miles from the nearest Louisiana shoreline.	06/03/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration, SEA No. L03–32.	Located in the central Gulf of Mexico south of Cocodrie, Louisiana.	06/03/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration, SEA No. L03–26 and L03–27.	Located in the central Gulf of Mexico south of Cocodrie and Fourchon, Louisiana.	06/05/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration, SEA No. L03–28 and L03–29.	Located in the central Gulf of Mexico south of Louisa and Leeville, Louisiana.	06/05/03

Activity/Operator	Location	Date
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–127.	Main Pass Area, Block 63, Lease OCS–G 18086, located 16 miles from the nearest Louisiana shoreline.	06/20/03
Maritech Resources, Inc., Structure Removal Activity, SEA ES/SR No. 03–128, 03–129 and 03–130.	Eugene Island Area, Block 215, Lease OCS–G 00580, 37 miles from the nearest Louisiana shoreline.	06/18/03
Hunt Oil Company, Structure Removal Activity, SEA ES/SR No. 03–131.	Eugene Island Area, Block 76, Lease OCS–G 04823, located 17 miles from the nearest Louisiana shoreline.	06/11/03
Union Oil Company of California, Structure Removal Activity, SEA ES/SR No. 03–132.	South March Island Area, Block 11, Lease OCS–G 01182, located 35 miles southwest from the nearest Louisiana shoreline.	06/09/03
Torch Energy Services, Inc., Structure Removal Activity, SEA ES/SR No. 03–133.	Main Pass Area, Block 100, Lease OCS–G 04910, located 13 miles east-southeast of the nearest Louisiana shoreline.	06/16/03
EOG Resources, Structure Removal Activity, SEA ES/SR No. 03–137.	East Cameron Area, Block 118, Lease OCS–G 14362, located 36 miles south-southwest from the nearest Louisiana shoreline.	06/16/03
Nexen Petroleum U.S.A., Inc., Structure Removal Activity, SEA ES/SR No. 03–134.	Eugene Island Area, Block 295, Lease OCS–G 02104, located 70 miles from the nearest Louisiana shoreline.	06/18/03
Walter Oil & Gas Corporation, Structure Removal Activity, SEA ES/SR No. 03–135 and 03–136.	Padre Island Area, Blocks 976 and 996, OCS-G 05954 and 08962, located 25 miles from the nearest Louisiana shoreline.	06/23/03

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: June 27, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–18531 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lake Casitas Resource Management Plan, Ventura County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare a draft environmental impact statement (EIS).

SUMMARY: Pursuant to section 102(2) (c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation proposes to prepare a draft environmental impact statement (DEIS) for Lake Casitas Resource Management Plan (RMP), which will be issued concurrent with the DEIS. Reclamation will be conducting two public scoping meetings to elicit comments on the scope and issues to be addressed in both the RMP and EIS. The date and time of these meetings are listed below. Reclamation is also seeking written comments, as noted below. The Draft RMP and DEIS are expected to be issued in late 2004.

DATES: Submit written comments on or before September 23, 2003.

The two scoping meetings will be held as follows:

- September 24, 2003, at 7 p.m., Ojai, CA 93023
- September 25, 2003, at 7 p.m., Ventura, CA 93001

ADDRESSES: Written comments on the scope of the RMP and DEIS should be sent to Mr. Dan Holsapple, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1813; or by telephone at 559–487–5409; or faxed to 559–487–5130 (TDD 559–487–5933).

The meeting locations are:

- Ojai, California, at the Soule Golf Course, Banquet Room, 1033 East Ojai Avenue
- Ventura, California, at the E.P. Foster Library, Topping Room, 651 East Main Street

FOR FURTHER INFORMATION CONTACT: Mr. Dan Holsapple, Bureau of Reclamation, 559–487–5409.

SUPPLEMENTARY INFORMATION: The Casitas Project (originally called the Ventura Project) was constructed in the early 1950's by Reclamation on behalf of Ventura County and Casitas Municipal Water District (Casitas). The project includes Casitas Dam, Lake Casitas, the developed Recreation Area at the north end of the lake, and the Open Space Lands north of the lake, purchased in the late 1970's. Casitas operates the dam and manages the Open Space Lands under contracts with Reclamation. Casitas manages the Recreation Area, although a formal contract has not been established with Reclamation to date.

Reclamation is preparing a RMP for government lands associated with the Casitas Project, including the Recreation Area. The RMP will include long-term management actions to protect natural resources while maintaining and enhancing recreational opportunities. The RMP will be used to guide the development of a long-term recreation contract between Reclamation and the non-Federal Managing Partner, Casitas.

The RMP will specifically address the Recreation Area, the entire lake, and all government land surrounding the lake. The objective of an RMP is to establish management objectives, guidelines, and actions to be implemented by Reclamation directly, or through its recreation contract with Casitas, that will protect the water supply and water quality functions of Lake Casitas; protect and enhance natural and cultural resources in the Recreation Area consistent with Federal law and Reclamation policies; and provide recreational opportunities and facilities consistent with the Project purposes and Reclamation policies.

The development of the RMP will be performed within the authorities provided by the Congress through the Reclamation Act, Federal Water Project Recreation Act, Reclamation Recreation Management Act, and applicable agency and Department of the Interior policies.

The RMP will be developed based on a comprehensive inventory of environmental resources and Project facilities. It will include an analysis of the natural resources of the area, the identification of land use suitability and capability, and the development of management policies, objectives, responsibilities, guidelines, and plans. The overall purpose of an RMP is to foster stewardship of Reclamation lands. The RMP will enable managers to make land-use and resource decisions that are consistent with the overall management objectives of Reclamation land and water areas and the needs of the public. The RMP will assist Reclamation in minimizing conflicts among the competing interests and types of use at Lake Casitas.

The plan will be developed with input from various agencies and parties, including (but not limited to) U.S. Fish and Wildlife Service and National Marine Fisheries Service, Ventura County (various departments), Casitas, City of Ojai, environmental and community groups, and the public. The plan will be used to guide future recreational uses and administrative arrangements to be considered by Reclamation in the establishment of a recreation contract with Casitas.

The primary emphasis of the RMP will be protecting Project water supply, water quality, and natural resources, while enhancing recreational uses at and surrounding the lake. Specific issue areas to be addressed include (among others): management of the Casitas Open Space lands north of Highway 150 to protect water quality; improvements and expansion of recreational facilities in the Recreation Area; potential new trails surrounding the lake; expanded areas for boat fishing; protection of sensitive natural and cultural resources; coordination with adjacent activities on the National Forest; and fire management practices.

The environmental impacts of the RMP and associated alternatives will be assessed in an EIS that will be prepared concurrent with the RMP. The environmental review will focus on the potential for management actions to cause adverse environmental impacts to natural and cultural resources such as water quality, endangered species, public safety, and historic resources. It will include an analysis of alternative land, recreation, and natural resource management approaches.

Reclamation practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 3, 2003.

Robert Eckart,

Chief, Environmental Compliance Branch, Mid-Pacific Region.

[FR Doc. 03–18952 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–436 (Preliminary) and 731–TA–1042 (Preliminary)]

Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions From India

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from India of certain colored synthetic organic oleoresinous pigment dispersions [2] that are alleged to be subsidized by the Government of India and alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 5, 2003, a petition was filed with the Commission and Commerce by Apollo Colors, Inc., Rockdale, IL; General Press Colors, Ltd., Addison, IL; Magruder Color Company, Inc., Elizabeth, NJ; and Sun Chemical Corporation, Fort Lee, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of certain colored synthetic organic oleoresinous pigment dispersions from India. Accordingly, effective June 5, 2003, the Commission instituted countervailing duty investigation No. 701–TA–436 (Preliminary) and antidumping duty investigation No. 731–TA–1042 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 11, 2003 (68 FR 35003). The conference was held in Washington, DC on June 27, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 21, 2003. The views of the Commission are contained in USITC Publication 3615 (July 2003), entitled Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions from India: Investigation Nos. 701–TA–436 (Preliminary) and 731–TA–1042 (Preliminary).

By order of the Commission.

Issued: July 21, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–18926 Filed 7–24–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 15, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Certain colored synthetic organic pigment dispersions subject to these investigations are classifiable under statistical reporting numbers 3204.17.6020 (Pigment Blue 15:4) and 3204.17.6085 (Pigments Red 48:1, Red 48:2, Red 48:3, and Yellow 174), 3204.17.9005 (Pigment Blue 15:3), 3204.17.9010 (Pigment Green 7), 3204.17.9015 (Pigment Green 36), 3204.17.9020 (Pigment Red 57:1), 3204.17.9045 (Pigment Yellow 12), 3204.17.9050 (Pigment Yellow 13), 3204.17.9055 (Pigment Yellow 74), and 3204.17.9086, which prior to July 2002 was 3204.17.9085 (Pigments Red 22, Red 48:4, Red 49:1, Red 49:2, Red 52:1, Red 53:1, Yellow 14, and Yellow 83) of the Harmonized Tariff Schedule of the United States.

20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Fire Protection (Underground Coal Mines).

OMB Number: 1219–0054.

Affected Public: Business or other for-profit.

Number of Respondents: 893.

Requirement	Frequency	Annual responses	Average response time (hours)	Annual burden hours
Examine chemical fire extinguishers—30 CFR 75.1100–3	Semi-annually	36,840	0.033	1,216
Program of instruction—30 CFR 75.1101–23(a)	On occasion	248	0.500	124
Fire drill certifications—30 CFR 75.1101–23(c)	Quarterly	10,716	0.500	5,358
Inspect automatic fire sensors and warning devices—30 CFR 75.1103–8				
Weekly examinations	Weekly	123,760	0.250	30,940
Weekly certification	Weekly	123,760	0.170	21,039
Annual function test	Annually	2,380	0.250	595
Test fire hydrant—30 CFR 75.1103–11	Annually	35,700	0.500	17,850
Total		333,404		77,122

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,240.

Description: Section 311(a) of the Mine Safety and Health Act of 1977 (Pub. L. 91–173) states that each coal mine shall be provided with suitable firefighting equipment adapted for the size and conditions of the mine. Under 30 CFR 75.1100–3, chemical fire extinguishers must be examined every 6 months and the date of the examination recorded on a permanent tag attached to the extinguisher. Under section 75.1101–23(a), operators of underground coal mines are required to establish a program for the instruction of all miners in the proper fire fighting and evacuation procedures to be followed in event of an emergency. The program includes a specific fire fighting and evacuation plan designed to acquaint miners on all shifts with procedures for: (i) Evacuation of all miners not required for fire fighting activities; (ii) rapid assembly and transportation of necessary people, fire suppression equipment, and rescue apparatus to the scene of the fire; and (iii) operation of the fire suppression equipment available in the mine. Under section 75–1101–23(c), an underground coal mine operator is required to conduct fire drills at intervals of not more than 90 days. The operator is to certify by signature and date that fire drills were conducted in accordance with the approved program. Under section 75.1103–8, a qualified person must examine the automatic fire sensor and warning device systems on a weekly basis, and must conduct a functional test of the complete system at least once a year. Under section 75.1103–11, each fire hydrant and hose must be tested at least once a year, and the records of those tests shall be kept in an appropriate location.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–18964 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 21, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Reporting and Performance Standards System for Migrant and Seasonal Farmworker Youth Programs Under Title I–D, section 167 of the Workforce Investment Act (WIA).

OMB Number: 1205–0429.

Affected Public: Not-for-profit institutions.

Type of Response: Recordkeeping and Reporting.

Information collection requirement	Number of Responses	Frequency	Annual responses	Average response time (hours)	Annual burden hours
Plan Narrative	12	Annually	12	5	60
Data Record	12	On occasion	5,000	3	15,000
Report from Data Record	12	Annually	12	2	24
Budget Information Summary (ETA–9096)	12	Annually	12	15	180
Program Planning Summary (ETA–9097)	12	Annually	12	15	180
Program Status Summary (ETA–9098)	12	Quarterly	48	7	336
Totals			5,096		15,780

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 185 of the Workforce Investment Act (WIA). (Pub. L. 105–220) requires funds recipients to keep records and submit such reports as may be required by the Secretary of Labor ''to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully.'' The WIA Final Rules at 20 CFR 667.300 require annual plans and quarterly performance reports from all ''direct grant recipients''.

The primary uses of the data under WIA 167 Migrant and Seasonal Farmworker Youth Program are to provide material reports to the Secretary of Labor, respond to Congressional inquiries, support Congressional testimony on behalf of the program and to identify areas of technical assistance need and performance improvement. Data is also used to establish performance standards for each of the required performance measures per regulations at part 669, subpart D, sections 669.500 and 669.510.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–18965 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; Comment Request

July 21, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1994 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Vanessa Reeves on (202) 693–4124 (this is not a toll-free number) or E-Mail: *reeves.vanessa2@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on whose who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed.

OMB Number: 1205–0028.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Weekly.

Number of Respondents: 53.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
ETA 538	2,756	.50	1,378
ETA 539	2,756	.833	2,297
Total	5,512		3,675

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The ETA 538 and ETA 539 reports are weekly reports which contain information on initial claims and continued weeks claimed. These figures are important economic indicators. The ETA 538 provides information that allows national unemployment claims information to be released to the public five days after the close of the reference period. The ETA 539 contains more refined weekly claims detail and the state's 13-week insured unemployment rate, which is used to determine eligibility for the Extended Benefits program.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–18966 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 16, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Vanessa Reeves on 202–693–4124 (this is not a toll-free number) or E-Mail: *reeves,vanessa2@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Ground Control Plan.

OMB Number: 1219–0026.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Reporting.

Number of Respondents: 1,401.

Information collection requirements	Annual responses	Average response time (hours)	Annual burden hours
New Ground Control Plans	168	9.00	1,512
Revised Ground Control Plans	34	6.00	204
Total	202	.....	1,716

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining system or purchasing services): $267.

Description: 30 CFR 77.1000 and 77.1000–1 require that Ground Control Plans that are reviewed by MSHA to ensure that surface coal mine operators' methods of controlling highwalls and spoil banks are consistent with prudent engineering design and will ensure safe working conditions for miners.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–18967 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–43–M

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 supersedes 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, 2090 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 *http://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.

Dated: Signed at Washington, DC, this 17th day of July 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–18711 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GE2003–2]

Draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor.

ACTION: Extension of comment period, announcement of public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the comment period for its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing (draft guidelines) an additional forty-five (45) days, until September 18, 2003, OSHA is also announcing that a public stakeholder meeting will be held on October 2, 2003, in Washington, DC.

DATES: *Written Comments:* Comments must be submitted by the following dates:

Hard Copy: You must submit your comments (postmarked or sent) by September 18, 2003.

Facsimile and electronic transmission: You must submit your comments by September 18, 2003. (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

Stakeholder meeting: OSHA will hold a half-day stakeholder meeting to discuss the draft guidelines. The meeting will be held on Thursday, October 2, 2003, from 8:30 a.m. to 12:30 p.m. in Washington, DC. Interested persons must submit their intention to participate in the stakeholder meeting through express delivery, hand delivery, messenger service, fax, or electronic means by September 18, 2003.

ADDRESSES:

I. Submission of Comments and Intention To Participate in Stakeholder Meeting

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. GE2003–2,

Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and the Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., E.S.T. You need only submit one copy of your intention to participate in the stakeholder meeting by express delivery, hand delivery, or messenger service to the above address.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. GE2003–2, in your comments. You may also fax your intention to participate in the stakeholder meeting.

Electronic: You may submit comments and your intention to participate in the stakeholder meeting through the Internet at *http://ecomments.osha.gov/.* (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of the Draft Guidelines

You can download the draft guidelines from OSHA's Web page at *http://www.osha.gov.* A printed copy of the draft guidelines is available from the OSHA Office of Publications, Room N–3101, U.S., Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

III. Stakeholder Meeting

The stakeholder meeting will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001; telephone (202) 628–2100.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

OSHA announced publication of its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing in the **Federal Register** on June 4, 2003 (68 FR 33536). In that notice, the Agency provided the public with sixty (60) days to submit written comments, until August 4, 2003. Several interested persons requested that OSHA provide additional time to submit written comments on the draft guidelines. In light of the interest expressed by the public, and to provide a similar extension to that previously provided on OSHA's draft ergonomics guidelines for the retail grocery industry, OSHA is providing an additional forty-five (45) days for comment. Accordingly, written comments must now be submitted by September 18, 2003.

II. Submission of Comments and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic submission, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related procedures the use of regular mail may cause a significant delay in the receipt of comments. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web page at *www.osha.gov.* OSHA cautions you about submitting personal information such as social security numbers, date of birth, etc. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web page and for assistance in using the internet to locate docket submissions.

III. Stakeholder Meeting

Following the close of the comment period, OSHA will hold a stakeholder meeting in Washington, DC, at the Washington Court Hotel on Thursday, October 2, 2003 from 8:30 a.m. to 12:30 p.m. Interested parties must submit their intention to participate in the stakeholder meeting by September 18, 2003 to allow the Agency to make appropriate plans for the meeting.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 18 day of July, 2003

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–18959 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting

AGENCY: National Council on Disability (NCD).

AGENDA: Roll call, announcements, reports, new business, adjournment.

Time and Date: 1 p.m.–2:30 p.m., August 20, 2003.

Place: Intercontinental Houston Hotel, 2222 West Loop South, Houston, Texas.

Status: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below.

FOR FURTHER INFORMATION CONTACT: Geraldine Drake Hawkins, PhD., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: July 22, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–19019 Filed 7–24–03; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the

Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 1, 2003.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

2. *Date:* August 4, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

3. *Date:* August 5, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

4. *Date:* August 6, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

5. *Date:* August 7, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

6. *Date:* August 7, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

7. *Date:* August 8, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

8. *Date:* August 8, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

9. *Date:* August 8, 2003.
Time: 11 a.m. to 12 p.m.
Room: 318.
Program: This meeting will review applications for Faculty Research Awards, submitted to the Division of Research Programs at the May 1, 2003 deadline.

10. *Date:* August 8, 2003.
Time: 4 p.m. to 5 p.m.
Room: 318.
Program: This meeting will review applications for Faculty Research Awards, submitted to the Division of Research Programs at the May 1, 2003 deadline.

11. *Date:* August 11, 2003.
Time: 9 a.m. to 5 p.m.
Room: 527.
Program: This meeting will review applications for Faculty Research Awards, submitted to the Division of Research Programs at the May 1, 2003 deadline.

12. *Date:* August 11, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

13. *Date:* August 11, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

14. *Date:* August 12, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

15. *Date:* August 12, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

16. *Date:* August 13, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

17. *Date:* August 13, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

18. *Date:* August 14, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

19. *Date:* August 14, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

20. *Date:* August 15, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

21. *Date:* August 19, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 03–18998 Filed 7–24–03; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413, 50–414, 50–369 and 50–370]

Duke Energy Corporation, et al., Catawba Nuclear Station, Units 1 and 2; McGuire Nuclear Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Unit Nos. 1 and 2 (McGuire), located in Mecklenburg County, North Carolina and to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Power Company, *et al.* (the licensee), for operation of the Catawba Nuclear Station (CNS), Units 1 and 2, located in York County, South Carolina.

The proposed amendments, requested by the licensee in a letter dated February 27, 2003, would revise the Technical Specifications (TSs) to allow the use of four mixed oxide (MOX) lead assemblies at either the Catawba Nuclear Station or the McGuire Nuclear Station. The licensee has proposed changes to two sections of the TSs that address the storage of MOX fuel assemblies in the spent fuel storage racks: Section 3.7.15, ''Spent Fuel Assembly Storage'' and Section 4.3, ''Fuel Storage.'' The licensee has also proposed changes to TS Section 4.2, ''Reactor Core,'' to reflect the use of MOX fuel in addition to the currently specified slightly enriched uranium dioxide fuel and to reflect the use of fuel rods clad with an M5™ zirconium alloy that has a different material specification than the materials currently referenced in the TS. Associated changes are proposed for TS Section 5.6.5, ''Core Operating Limits Report (COLR),'' to add several more methodologies that will be used to develop the limits that will be included in the COLR. Associated changes have also been proposed for the TS Bases section.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 25, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html.* If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Lisa F. Vaughn, Legal Department (ECIIX), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(l)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92. For further details with respect to the proposed action, see the licensee's application dated February 27, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document room, located at One White Flint North, 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.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of July, 2003.

For the Nuclear Regulatory Commission.

Robert E. Martin, Sr.,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18963 Filed 7–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–09164]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of a License Amendment of U. S. Nuclear Regulatory Commission Byproduct Material License No. 47–15473–01, Charleston Area Medical Center

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Material License No. 47–15473–01 to authorize the release of one of the licensee's facilities located on Pennsylvania Avenue in Charleston, West Virginia, for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

The NRC has reviewed the results of the final survey of Laboratory 304 located at 830 Pennsylvania Avenue in Charleston, West Virginia. The Charleston Area Medical Center was authorized by the NRC from August 31, 1995 until the present to use radioactive materials for research and development purposes at the Pennsylvania Avenue facility. The authorization was limited to the in-vitro use of small quantities of Hydrogen-3, Carbon-14, Phosphorous-32, and Iodine-125. In September 2002, the Charleston Area Medical Center ceased operations with licensed materials at the Pennsylvania Street location and requested that it be removed from their materials license as a place of use. The Charleston Area Medical Center has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has evaluated the Charleston Area Medical Center's request and the results of the surveys, performed a confirmatory survey, and has developed an EA in accordance with the requirements of 10 CFR Part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact on human health and the environment for the proposed licensing action.

II. Environmental Assessment

Introduction

The Charleston Area Medical Center has requested release, for unrestricted use, of their facility located at Suite 304, 830 Pennsylvania Avenue, in Charleston, West Virginia, as authorized for use by NRC License No. 47–15473–01. This location of use was authorized on August 31, 1995. NRC-licensed activities performed at the Pennsylvania Avenue location were limited to laboratory procedures typically performed on bench tops and in hoods. No outdoor areas were affected by the use of licensed materials. Licensed activities ceased completely in September 2002, and the licensee requested release of the facility for unrestricted use. Based on the licensee's historical knowledge of the site and the condition of the facility, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. The licensee surveyed the facility and provided documentation that the facility meets the license termination criteria specified in Subpart E of 10 CFR part 20, ''Radiological Criteria for License Termination.''

The Proposed Action

The proposed action is to amend NRC Radioactive Materials License No. 47–15473–01 to release one of the licensee's facilities located at Suite 304, 830 Pennsylvania Avenue, in Charleston, West Virginia, for unrestricted use. By letter dated September 3, 2002, the Charleston Area Medical Center provided survey results which demonstrate that the Pennsylvania Avenue facility in Charleston, West Virginia is in compliance with the radiological criteria for license termination in Subpart E of 10 CFR Part 20, ''Radiological Criteria for License Termination.'' No further actions or activities are required on the part of the licensee to remediate the facility.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to release the licensee's Pennsylvania Avenue facility for unrestricted use and to remove the location as an authorized place of use from the materials license. This will allow the licensee to make other use of the facility. There is no residual radioactivity remaining at the facility that is distinguishable from background levels. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of facilities for unrestricted use that ensures protection of public health and safety and environment.

Alternative to the Proposed Action

The only alternative to the proposed action of amending the license to release the Pennsylvania Avenue facility for unrestricted use is no action. The no-action alternative is not acceptable because it will result in violation of NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease. The licensee does not plan to perform any activities with licensed materials at these locations. Maintaining the area under a license would also reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The licensee's place of use within Laboratory 304 is located in a four story concrete and stucco medical offices building adjacent to the Charleston Area Medical Center's Women and Children's Hospital. The hospital is surrounded by similar type construction office buildings.

The NRC staff has reviewed the surveys performed by the Charleston Area Medical Center to demonstrate compliance with the 10 CFR 20.1402 license termination criteria and has performed a confirmatory survey. Based

on its review, the staff has determined that the affected environment and environmental impacts associated with the decommissioning of the Charleston Area Medical Center facility are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Charleston Area Medical Center facility is in compliance with 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use.'' The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Contacted and Sources Used

This Environmental Assessment was prepared entirely by the NRC staff. The U.S. Fish and Wildlife Service was contacted for comment and responded by letter dated December 10, 2002, with no opposition to the action. The West Virginia Division of Culture and History was also contacted and responded by letter dated November 15, 2002, with no opposition.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR Part 20. NRC has prepared this EA in support of the proposed license termination to release the Charleston Area Medical Center facility located at Suite 304, 830 Pennsylvania Avenue, in Charleston, West Virginia, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined that preparation of an environmental impact statement for the proposed action is not required.

List of Preparers

Orysia Masnyk Bailey, Health Physicist, Materials Licensing/ Inspection Branch 1, Division of Nuclear Materials Safety, Region II.

List of References

1. NRC License No. 47–15473–01 inspection and licensing records.

2. Charleston Area Medical Center. (License amendment request and supporting documentation) Letter from S. Danak to NRC dated September 3, 2002. (ML022470219)

3. Title 10 Code of Federal Regulations Part 20, Subpart E, ''Radiological Criteria for License Termination.''

4. **Federal Register** notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, ''Use of Screening Values to Demonstrate Compliance With the Federal Rule on Radiological Criteria for License Termination.''

5. NRC. NUREG–1757 ''Consolidated NMSS Decommissioning Guidance,'' Final Report dated September 2002.

6. NRC. NUREG 1496 ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities,'' Final Report dated July 1997.

7. U.S. Fish and Wildlife Service. Letter from J.K. Towner to NRC dated December 10, 2002 (ML023500031).

8. West Virginia Department of Culture and History. Letter from S.M. Pierce to NRC dated November 15, 2002.

III. Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a significant effect of the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The references listed above are available for public inspection and may also be copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These documents are also available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.htlm*. Any questions with respect to this action should be referred to Orysia Masnyk Bailey, Materials Licensing/ Inspection Branch 1, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region II, Suite 23T85, 61 Forsyth Street, SW., Atlanta, Georgia, 30303. Telephone 404–562–4739.

Dated at Atlanta, Georgia the 11th day of July, 2003.

For the Nuclear Regulatory Commission.

Douglas M. Collins,

Division of Nuclear Materials Safety, Region II.

[FR Doc. 03–18960 Filed 7–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

FPL Energy Seabrook, LLC, Et al.; Seabrook Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.60, ''Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation,'' and 10 CFR part 50, appendix G, ''Fracture Toughness Requirements,'' for Facility Operating License No. NPF–86, issued to FPL Energy Seabrook, LLC, *et al.* (the licensee), for operation of the Seabrook Power Station, located in Seabrook, New Hampshire. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR part 50, section 50.60(a) and Appendix G, and allow the use of American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME Code) Code Case N–641 in the development of the Seabrook Reactor Pressure Vessel (RPV) Pressure and Temperature (P–T) limits. These limits would be used through 20 effective full-power years of operation.

10 CFR 50.60(a) requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 requires that P–T limits be established for RPVs during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR part 50, Appendix G states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Additionally, the appendix specifies that the requirements for these limits are given in the ASME Code, section XI, appendix G limits.

ASME Code Case N–641 permits the use of alternate reference fracture toughness curves (*i.e.*, use of the ''K_{IC} fracture toughness curve'' instead of the

''K_{IA} fracture toughness curve,'' as defined in ASME Code, section XI, appendices A and G, respectively) for reactor vessel materials in determining the P–T limits for heatup, cooldown, and inservice testing.

The proposed action is in accordance with the licensee's application dated October 11, 2002.

The Need for the Proposed Action

The provisions of ASME Code Case N–641 were incorporated in appendix G of section XI of the ASME Code in the 1998 though the 2000 Addenda, which is the edition and addenda of record in the 2003 Edition of 10 CFR part 50. However, the proposed action is needed to apply Code Case N–641, because the Seabrook licensing basis has only been updated to include the 1995 Edition through the 1996 Addenda of the ASME Code.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that, as set forth below, there are no significant environmental impacts associated with the use of ASME Code Case N–641 in developing RPV P–T limits for heatup, cooldown, and inservice testing. The proposed action does not adversely affect the integrity of the reactor vessel or the function of the reactor vessel to act as a radiological barrier during an accident.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. The proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1, dated December 1982.

Agencies and Persons Consulted

On June 4, 2003, the staff consulted with the New Hampshire State Official, Mike Nawoj of the New Hampshire Office of Emergency Management, and with the Massachusetts State Official, Diane Brown-Couture, of the Massachusetts Emergency Management Agency, regarding the environmental impact of the proposed action. The State Officials had no comments.

Finding of No Significant Impact

On the basis of the Environmental Assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 11, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of July, 2003.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18962 Filed 7–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Fort Calhoun Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G for Facility Operating License No. DPR–40, issued to Omaha Public Power District (the licensee), for operation of the Fort Calhoun Station, Unit No. 1 (FCS), located in Washington County, Nebraska. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of Appendix G to 10 CFR Part 50 to allow the application of the methodology in Combustion Engineering (CE) Topical Report NPSD–683–A, Revision 6, ''Development of a RCS Pressure and Temperature Limits Report for the Removal of P–T Limits and LTOP Requirements from the Technical Specifications,'' for the calculation of flaw stress intensity factors due to thermal stress loadings (K_{It}).

The proposed action is in accordance with the licensee's application dated October 8, 2002.

The Need for the Proposed Action

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of the alternative methodology. The proposed action would revise the currently-approved methodology for pressure temperature (P–T) limit calculations to incorporate the methodology approved for use in CE NPSD–683–A, Revision 6. CE NPSD–683–A, Revision 6, allows the use of an alternate methodology to calculate the flaw stress intensity factors due to thermal stress loadings (K_{It}). The exemption is needed because the methodology in CE NPSD–683–A, Revision 6, could not be shown to be conservative with respect to the methodology for the determination of K_{It} provided in Editions and Addenda of ASME Code, Section XI, Appendix G, through the 1995 Edition and 1996

Addenda (the latest Edition and Addenda of the ASME Code which had been incorporated into 10 CFR 50.55a at the time of the staff's review of CE NPSD–683–A, Revision 6). Therefore, in conjunction with the licensee's October 8, 2002, license amendment request, the licensee also submitted an exemption request, consistent with the requirements of 10 CFR 50.60, to apply the K_{It} calculational methodology of CE NPSD–683–A, Revision 6 as part of the FCS pressure temperature limit report (PTLR) methodology.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the reactor pressure vessel at FCS. The details of the staff's evaluation will be provided in the exemption to Appendix G, which will allow the use of the methodology in Topical Report NPSD–683–A, Revision 6, to calculate the flaw stress intensity factors due to thermal stress loadings (K_{It}), that will be issued in a future letter to the licensee.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the FCS dated August 1972.

Agencies and Persons Consulted

On July 18, 2003, the staff consulted with the Nebraska State official, Howard Shuman of the Nebraska Consumer Health Services Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 8, 2002. 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 System (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 e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 18th day of July, 2003.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18961 Filed 7–24–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27699]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 21, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 15, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 15, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Progress Energy, Inc. (70–10132)

Progress Energy, Inc. (''Progress Energy''), a registered holding company, 410 South Wilmington Street, Raleigh, North Carolina 27602, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Progress Energy directly or indirectly owns all of the outstanding common stock of Carolina Power & Light Company, Florida Power Corporation, and North Carolina Natural Gas Corporation (collectively, the ''Utility Subsidiaries''). Together, the Utility Subsidiaries provide electric service and natural gas or gas transportation service to approximately 2.9 million wholesale and retail customers in parts of three states. The Utility Subsidiaries and non-regulated generating subsidiaries of Progress Energy own all or portions of thirty-six electric generating plants in

the United States having a combined generating capability of more than 21,900 megawatts. Through direct and indirect subsidiaries, Progress Energy is also engaged in various nonutility businesses.

Progress Energy requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of Progress Energy would be $100,000. Progress Energy also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as Progress Energy in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[1] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

[1] Progress Energy is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

Ameren Corporation (70–10133)

Ameren Corporation (''Ameren''), a registered holding company, 1901 Chouteau Avenue, St. Louis, Missouri 63103, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Ameren directly or indirectly owns all of the outstanding common stock of the following public-utility companies: Union Electric Company; Central Illinois Public Service Company; and Central Illinois Light Company (collectively, the ''Utility Subsidiaries''). Together, the Utility Subsidiaries provide electric service to approximately 1.7 million wholesale and retail customers and approximately 500,000 retail natural gas customers in parts of Missouri and Illinois. The Utility Subsidiaries and non-regulated generating subsidiaries of Ameren own all or portions of electric generating plants in the United States having a combined generating capability of more than 14,500 megawatts. Through direct and indirect subsidiaries, Ameren is also engaged in various nonutility businesses.

Ameren requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of Ameren would be $100,000. Ameren also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as Ameren in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[2] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon

[2] Ameren is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; Progress Energy, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Cinergy Corp. (70–10134)

Cinergy Corp. (''Cinergy''), a registered holding company, 139 East Fourth Street, Cincinnati, Ohio 45202, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Cinergy directly or indirectly owns all of the outstanding common stock of the following public-utility companies: PSI Energy, Inc.; The Cincinnati Gas & Electric Company; The Union Light, Heat & Power Company; Lawrenceburg Gas Company; and Miami Power Corporation (collectively, the ''Utility Subsidiaries''). Together, the Utility Subsidiaries provide retail gas and electric and wholesale electric service to more than 1.5 million customers in parts of Indiana, Ohio, and Kentucky. The Utility Subsidiaries and non-regulated generating subsidiaries of Cinergy own all or portions of thirty-one electric generating plants in the United States having a combined generating capability of approximately 13,929 megawatts. Through direct and indirect subsidiaries, Cinergy is also engaged in various nonutility businesses.

Cinergy requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of Cinergy would be $100,000. Cinergy also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as Cinergy in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[3] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or

[3] Cinergy is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Progress Energy, Inc.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Pepco Holdings, Inc. (70–10135)

Pepco Holdings, Inc. (''Pepco''), a registered holding company, 701 9th Street, 10th Floor, Suite 1300, Washington DC 20068, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Pepco directly or indirectly owns all of the outstanding common stock of the following public-utility companies: Atlantic City Electric Company; Delmarva Power & Light Company; Potomac Electric Power Company; Conectiv Delmarva Generation, Inc.; and Conectiv Atlantic Generation, LLC (collectively, the ''Utility Subsidiaries''). Together, the Utility Subsidiaries provide retail and wholesale electric service to more than 1.8 million customers in parts of the District of Columbia, Delaware, Maryland, New Jersey, and Virginia. The Utility Subsidiaries and other non-regulated generating subsidiaries of Pepco own all or portions of twenty-four electric generating plants in the United States having a combined generating capability of approximately 4,580 megawatts. Through direct and indirect subsidiaries, Pepco is also engaged in various nonutility businesses.

Pepco requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of Pepco would be $50,000. Pepco also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as Pepco in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[4] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

[4] Pepco is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; Progress Energy, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

FirstEnergy Corporation (70–10138)

FirstEnergy Corporation (''FirstEnergy''), a registered holding company, 76 South Main Street, Akron, Ohio 44308, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

FirstEnergy directly or indirectly owns all of the outstanding common stock of eleven public-utility companies: Ohio Edison Company; The Cleveland Electric Illuminating Company; The Toledo Edison Company; American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Pennsylvania Electric Company; Metropolitan Edison Company; Pennsylvania Power Company; York Haven Power Company; The Waverly Electric Power & Light Company (collectively, the ''Electric Utility Subsidiaries''); and Northeast Ohio Natural Gas Corp. (''NONG''). Together, the Electric Utility Subsidiaries provide electric service to approximately 4.3 million retail and wholesale customers in a 37,200 square mile area in Ohio, New Jersey, New York, and Pennsylvania. NONG provides gas transportation and distribution services to approximately 5,000 customers in central and northeast Ohio. Certain of FirstEnergy's public-utility company subsidiaries own all or a portion of the units at sixteen electricity generating stations in the United States having a combined generating capability of approximately 13,387 megawatts. Through direct and indirect subsidiaries, FirstEnergy is also engaged in various nonutility businesses.

FirstEnergy requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of FirstEnergy would be $100,000. FirstEnergy also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as FirstEnergy in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[5] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating

[5] FirstEnergy is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; Progress Energy, Inc.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Exelon Corporation (70–10139)

Exelon Corporation (''Exelon''), a registered holding company, 10 South Dearborn Street, 37th Floor, Chicago, Illinois 60603, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Exelon has a number of public-utility company subsidiaries: PECO Energy Company, which transmits, distributes and sells electricity and purchases and sells natural gas in Pennsylvania; Commonwealth Edison Company, which transmits, distributes and sells electricity in Illinois; Exelon Generation Company (also a registered holding company), which generates and sells electricity in Pennsylvania, Illinois, and elsewhere; [6] Commonwealth Edison Company of Indiana; PECO Energy Power Company, Susquehanna Power Company; and Susquehanna Electric Company. Through direct and indirect subsidiaries, Exelon is also engaged in various nonutility businesses.

Exelon requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). Exelon also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as Exelon in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[7] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of

[6] Exelon Generation Company owns, directly or indirectly, electricity generating plants in the United States having a combined generating capability of approximately 26,241 megawatts.

[7] Exelon is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Progress Energy, Inc.; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Dominion Resources, Inc. (70–10140)

Dominion Resources, Inc. (''Dominion''), a registered holding company, 120 Tredegar Street, Richmond, Virginia, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Dominion directly owns all of the outstanding common stock of Virginia Electric & Power Company (''Virginia Electric''), which sells electricity to approximately 2.2 million retail customers and to wholesale customers. Virginia Electric non-regulated generating subsidiaries of Dominion own all or portions of thirty-eight electric generating plants in the United States having a combined generating capability of approximately 19,927 megawatts. Through direct and indirect subsidiaries, Dominion is also engaged in various nonutility businesses.

Dominion requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of Dominion would be $100,000. Dominion also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as Dominion in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[8] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over

[8] Dominion is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Progress Energy, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

American Electric Power Company, Inc. (70–10142)

American Electric Power Company, Inc. (''AEP''), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

AEP directly or indirectly owns all of the outstanding common stock of nine public-utility company subsidiaries (collectively, the ''Utility Subsidiaries''). Together, the Utility Subsidiaries provide retail and wholesale electric service to approximately 5 million customers in parts of eleven states (Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia). The Utility Subsidiaries and non-regulated generating subsidiaries of the Applicant own all or portions of ninety-three electric generating plants in the United States having a combined generating capability of approximately 40,000 megawatts. Through direct and indirect subsidiaries, AEP is also engaged in various nonutility businesses.

AEP requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of AEP would be $300,000. AEP also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as AEP in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[9]

[9] AEP is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; Progress Energy, Inc.; Cinergy Corp.;

Continued

These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Entergy Arkansas, Inc. (70–10143)

Entergy Arkansas, Inc. (''Entergy Arkansas''), 425 West Capitol Avenue, Little Rock, Arkansas 72201, a public-utility company subsidiary of Entergy Corporation, a registered holding company, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Entergy Arkansas provides retail electric service to approximately 649,000 customers in the State of Arkansas. It owns or leases all or portions of twelve electric generating plants having a combined generating capability of 4,690 megawatts. Entergy Corporation, through direct and indirect subsidiaries, is also engaged in various nonutility businesses.

Entergy Arkansas requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of Entergy Arkansas would be $100,000. Entergy Arkansas also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as Entergy Arkansas in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric

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Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[10] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Great Plains Energy Incorporated (70–10146)

Great Plains Energy Incorporated (''Great Plains''), a registered holding company, 1201 Walnut, Kansas City, Missouri 64106, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Great Plains directly owns all of the outstanding common stock of Kansas City Power & Light Company (''KCP&L''), a public-utility company. KCP&L provides retail and wholesale electric service to more than 485,000 customers in parts of Missouri and Kansas, and owns or leases all or portions of twenty-six electric generating plants in the United States having a combined generating capability of more than 4,043 megawatts. Through direct and indirect subsidiaries, Great Plains is also engaged in various nonutility businesses.

Great Plains requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of Great Plains would be $50,000. Great Plains also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is designed to facilitate investments by energy companies such as Great Plains in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives:

[10] Entergy Corporation, through Entergy Arkansas, is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Progress Energy, Inc.; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[11] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon (''Operating Agreement''), the business and affairs of the company shall be managed by its board of managers (''Board''). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Xcel Energy Inc. (70–10147)

Xcel Energy Inc. (''Xcel''), a registered holding company, 800 Nicollet Mall, Minneapolis, Minnesota 55402, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Xcel directly and indirectly owns all of the outstanding common stock of: Cheyenne Light, Fuel and Power Company; Northern States Power Company; Public Service Company of Colorado; and Southwestern Public Service Company (collectively, the ''Utility Subsidiaries''). Together, the Utility Subsidiaries provide retail and wholesale electric service to more than 3.2 million customers in parts of Colorado, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming. The Utility Subsidiaries own all or portions of seventy electric generating plants in the United States having a combined generating capability of approximately 15,246 megawatts. Through direct and indirect subsidiaries, Xcel is also engaged in various nonutility businesses.

Xcel requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC (''PowerTree Carbon''). The initial capital contribution of Xcel would be $100,000. Xcel also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy (''DOE''). It is

[11] Great Plains is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Progress Energy, Inc.; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

designed to facilitate investments by energy companies such as Xcel in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent ''Climate VISION'' plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[12] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company (''LLC''), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

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New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained (''Carbon Reductions'') based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18931 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

[12] Xcel is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Progress Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26101; File No. 812–12924]

ReliaStar Life Insurance Company of New York, et al.

July 21, 2003.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an amended order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting exemption from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: ReliaStar Life Insurance Company of New York (''RLNY''), Separate Account NY–B of ReliaStar Life Insurance Company of New York (''Account NY–B''), Golden American Life Insurance Company (''Golden American'') (with RLNY, the ''Life Companies''), Separate Account B of Golden American Life Insurance Company (''Account B'') (with Account NY–B, the ''Accounts''), any other separate accounts of RLNY or Golden American that support Future Contracts (defined below) (collectively, the ''Future Accounts'') and Directed Services, Inc. (''DSI'') (together, the ''Applicants'').

SUMMARY OF THE APPLICATION: Applicants hereby amend and restate an application originally filed on January 31, 2003 for an order to amend an existing order [1] (''Existing Order'') to: (1) Add Golden American, Account B, and DSI (collectively, ''Additional Applicants'') as parties to the Existing Order, and (2) permit the Additional Applicants to recapture certain bonuses applied to purchase payments made under (a) certain deferred variable annuity contracts and certificates, including certain certificate data pages and endorsements, that Golden American will issue through Account B (the ''Account B Contracts'') and under (b) contracts and certificates, including certain certificate data pages and endorsements, that the Life Companies may issue in the future through Account B or the Future Accounts of the Life Companies (together with Account B, the ''Accounts'') and that are substantially similar in all material respects to the deferred variable annuity contracts (''Account NY–B Contracts'') covered by the Existing Order (collectively, the ''Future Contracts'' and together with the Account B Contracts, the ''Contracts''). Applicants also request that the order being sought extend to any National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control with any Additional Applicant, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively ''Affiliated Broker-Dealers'').

FILING DATE: The Application was filed on January 31, 2003, and amended and restated on June 4, 2003, and June 27, 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 Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 15, 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 may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Linda Senker, Esq., Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Esq., Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. RLNY is a stock life insurance company originally incorporated under the laws of New York (originally incorporated under the name Morris Plan Insurance Society) on June 11, 1917. RLNY is engaged in the business of writing life insurance and annuities, both individual and group, and is authorized to do business in all 50 states. RLNY is a wholly-owned subsidiary of Security-Connecticut Life Insurance Company, which is a wholly-owned subsidiary of ReliaStar Life Insurance Company. RLNY is ultimately controlled by ING Groep N.V., a global financial services holding company with approximately $470.9 billion in assets as of December 31, 2002. As of December 31, 2002, Golden American had assets of approximately $17.6 billion. For purposes of the Act, RLNY is the depositor and sponsor of Account NY–B as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

2. Golden American is a stock life insurance company originally incorporated under the laws of Minnesota on January 2, 1973, and later redomiciled to Delaware. Golden American is engaged in the business of writing annuities, both individual and group, in all states (except New York) and the District of Columbia. Golden American is a subsidiary of Equitable Life Insurance Company of Iowa, which, in turn is a subsidiary of Lion Connecticut Holdings, Inc. Golden American is also ultimately controlled by ING Groep N.V. For purposes of the Act, Golden American is the depositor and sponsor for Account B, as those terms have been interpreted by the Commission with respect to variable annuity separate accounts. Golden American also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. Golden American may establish one or more additional Future Accounts for which it will serve as depositor.

3. Golden American established Account B as a segregated investment account under Delaware law on July 14, 1988. Under Delaware law, the assets of Account B attributable to the Account B Contracts and any other variable annuity contracts through which interests in the Account are issued are owned by Golden American but are held separately from all other assets of Golden American, for the benefit of the owners of, and the persons entitled to payment under, Contracts, issued through the Account. Consequently, such assets are not chargeable with liabilities arising out of any other business that Golden American may conduct. Income, gains and losses, realized or unrealized, from each subaccount of the Account B, are credited to or charged against that subaccount without regard to any other income, gains or losses of Golden American. Account B is a ''separate account'' as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. Each of the Accounts currently is divided into a number of subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type open-end management investment companies. The assets of each Account support one or more varieties of variable annuity contacts, including the Contracts. Account NY–B is registered with the Commission as a unit investment trust (File No. 811–7935), and interests in the Account to be offered through the Contracts have been registered under the 1933 Act on Form

[1] ReliaStar Life Insurance Company of New York, Investment Company Act Release No. 25875 (Jan. 22, 2003) (File No. 812–12914).

N–4 (File No. 333–85618). Account B is registered with the Commission as a unit investment trust (File No. 811–5626), and interests in the Account to be offered through the Contracts have been registered under the 1933 Act on Form N–4 (File No. 333–101481).

5. DSI is a wholly owned subsidiary of Lion Connecticut Holdings, Inc. It serves as the principal underwriter of a number of RLNY and Golden American separate accounts registered as unit investment trusts under the Act, including the Accounts, and is the distributor of variable annuity contracts issued through such separate accounts, including the Contracts. DSI is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the ''NASD'').

6. The Contracts are deferred combination variable and fixed annuity contracts that RLNY and Golden American may issue to individuals or groups on a ''non-qualified'' basis or in connection with employee benefit plans that receive favorable federal income tax treatment under Sections 401, 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, as amended (the ''Code'').

7. The Contracts make available a number of subaccounts of the Accounts to which owners may allocate net premium payments and associated bonus credits (described below) and to which owners may transfer contract value. The Contracts also offer fixed-interest allocation options under which RLNY or Golden American, as applicable, credit guaranteed rates of interest for various periods. Transfers of contract value among and between the subaccounts and, subject to certain restrictions, among and between the subaccounts and the fixed-interest options, may be made at any time. The Contracts offer a variety of annuity payment options to owners. In the event of an owner's (or, in certain circumstances, an annuitant's) death prior to the annuity commencement date, beneficiaries may elect to receive death benefits in the form of one of the annuity payment options instead of a lump sum. In general, the Contracts offer all of the features typically found in variable annuity contracts today.

8. The Contracts generally may only be purchased with a minimum initial premium of $15,000 ($1,500 for certain employee benefit plans) under Option Package I and $5,000 ($1,500 for certain employee benefit plans) for Option Packages II and III. RLNY or Golden American, as applicable, may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of $30 that RLNY or Golden American, as applicable, deducts on each Contract Anniversary and upon a full surrender of a Contract and a daily administrative charge deducted from the assets of the Account at an annual rate of 0.15% of the Account's average daily net assets. A daily mortality and expense risk charge is deducted from the assets of the Accounts at the following annual rates:

Account NY–B Contracts: 0.90% for Option Package I, 1.10% for Option Package II, and 1.25% for Option Package III, of the Account's average daily net assets. Account B Contracts: 0.95% for Option Package I, 1.15% for Option Package II, and 1.30% for Option Package III, of the Account's average daily net assets. The Contracts also provide for a charge of $25 for each transfer of contract value in excess of 12 transfers per contract year. RLNY and Golden American currently anticipate waiving this charge for the foreseeable future. Lastly, the Contracts have a surrender charge in the form of a contingent deferred sales charge.

9. The contingent deferred sales charge (''CDSC'') is equal to the percentage of each premium payment surrendered or withdrawn. The CDSC is separately calculated and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The CDSC applicable to each premium payment diminishes as the payment ages.

The Account NY–B Contract schedule is as follows:

Number of full years since payment of each premium	Charge (in percent)
less than 1	6.0
2	6.0
3	6.0
4	6.0
5	5.0
6	4.0
7	3.0
8+	0.0

The Account B Contract schedule is as follows:

Number of full years since payment of each premium	Charge (in percent)
less than 1	7.0
2	7.0
3	6.0
4	6.0
5	5.0
6	4.0
7	3.0
8+	0.0

10. No CDSC applies to contract value representing an annual free withdrawal amount or to contract value in excess of aggregate premium payments (less prior withdrawals of premium payments) (''earnings''). The CDSC is calculated using the assumption that premium payments are withdrawn on a first-in, first-out basis. The CDSC also is calculated using the assumption that contract value is withdrawn in the following order: (1) The annual free withdrawal amount for that contract year, (2) premium payments, and (3) earnings. The annual free withdrawal amount is 10% of contract value, measured at the time of withdrawal, less any prior withdrawals made in that contract year. Under Option Package III, any unused percentage of the 10% free withdrawal amount from a contract year may carry forward into successive contract years, based on the percentage remaining after the last withdrawal in a contract year. However, under Option Package III, the accumulated free withdrawal amount may not exceed 30% of contract value.

11. If an owner dies before the annuity start date, the Contracts provide, under most circumstances, for a death benefit payable to a beneficiary, computed as of the date RLNY or Golden American, as applicable, receives written notice and due proof of death. The death benefit payable to the beneficiary depends on whether the owner selected Option Package I, II or III. Each option package provides a death benefit upon the death of the owner which death benefit is based upon the highest amount payable under the separate death benefit options available under that option package. Under the Account NY–B Contracts, the death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(2) the contract value on the claim date, less credits applied since or within 12 months prior to death;

(3) the Annual Ratchet death benefit which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death; and

(4) return of premium.

Under Option Package I, the death benefit payable is the greater of (1), (2) and (4). Under Option Package II, the death benefit payable is the greatest of (1), (2), (3) and (4). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

Under the Account B Contracts, the death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(2) the contract value on the claim, less credits applied since or within 12 months prior to death;

(3) the Annual Ratchet death benefit which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death;

(4) the 5% Roll-Up death benefit which equals the lesser of premiums, plus credits, if applicable, adjusted for withdrawals and transfers, accumulated at 5% for Covered Funds or Excluded Funds and 0% for Special Funds until the earlier of attainment of age 90 or reaching the cap (equal to 3 times all premium payments and credits, if applicable, as reduced by adjustments for withdrawals) and thereafter at 0%, and the cap.

Under Option Package I, the death benefit payable is the greater of (1) and (2). Under Option Package II, the death benefit payable is the greatest of (1), (2) and (3). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

12. RLNY and Golden American intend to offer a bonus credit provision under the Contracts. At the time of application, an owner may elect the bonus credit provision. Under the bonus credit provision, RLNY or Golden American, as applicable, credits contract value in the subaccounts and the fixed-interest allocations with an amount that is a percentage of the premium payment. The bonus credit applies upon issuance of the Contract and is based upon premium payments received within the first contract year (''first year premium payments''). RLNY or Golden American, as applicable, allocates the bonus credit among the subaccounts and fixed-interest allocations the owner selects in proportion to the premium payment in each investment option. The bonus credit equals 4% of the first year premium payments. The annual charge assessed for the premium credit rider (as a percentage of contract value) is 0.50%. The charge is payable for the first seven contract years. The charge is deducted from the contract value in the subaccounts and is also deducted from amounts in fixed interest allocations by crediting a lower interest rate.

13. Under the bonus credit provision, RLNY or Golden American, as applicable, recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the ''free look'' period. RLNY or Golden American, as applicable, recaptures bonus credits applied after or within twelve months of the date as of which a death benefit is computed. RLNY or Golden American, as applicable, also will recapture part or all of the credited amount upon surrender or withdrawal. The portion of the credit deducted is based on the percentage of first year premium withdrawn and the contract year of surrender or withdrawal. The amount recaptured is calculated separately and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The recapture percentage applicable to each premium payment is level for the first two contract years and diminishes to zero after the seventh contract year. The schedule is as follows:

Contract year of surrender or withdrawal	Percentage of premium credit forfeited (based on percentage of first year premium withdrawn)
Years 1–2	100
Years 3–4	75
Years 5–6	50
Year 7	25
Years 8+	0

14. No recapture percentage applies to contract value representing the annual free withdrawal amount or to contract value representing earnings. Because of the recapture provisions discussed above, the value of a credit only ''vests'' or belongs irrevocably to the owner as the recapture period for the credit expires. As to bonus credits resulting from premiums paid before the ''free look'' period ends, no part of the credit vests for the owner until the expiration of the ''free look'' period. After the expiration of the ''free look'' period, all bonus credits vest in full over the 7-year period after RLNY or Golden American, as applicable, grants them. Under the bonus credit provision, RLNY or Golden American, as applicable, credits amounts to an owner's contract value either by ''purchasing'' accumulation units of an appropriate subaccount or adding to the owner's fixed interest allocation option values.

15. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in the Account) that RLNY or Golden American, as applicable, can ''recapture'' increases as variable contract value (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-a-vis RLNY or Golden American, as applicable, and other owners, and in his or her variable contract value vis-a-vis RLNY or Golden American, as applicable. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, RLNY or Golden American, as applicable, deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge and the daily administrative charge paid by any owner is greater than that which he or she would pay without the bonus credit.

16. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, adding Additional Applicants as parties to the Existing Order, and granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit Additional Applicants to recapture bonuses under Contracts under the same circumstances covered by the Existing Order.

Legal Analysis

1. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account supporting variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate

account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the ''* * * contract is a redeemable security; and * * * [t]he insurance company complies with Section 26(e) * * *''

2. Section 2(a)(32) defines a ''redeemable security'' as any security, other than short-term, paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company. Rule 22c–1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

4. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants submit that the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of an Account. Until the appropriate recapture period expires, RLNY and Golden American retain the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, if RLNY or Golden American recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. RLNY and Golden American would grant bonus credits out of their respective general account assets and the amount of the credits (although not the earnings on such amounts) would remain RLNY's or Golden American's until such amounts vest with the owner. Thus, to the extent that RLNY or Golden American may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of the Account's assets. It is the nature of the bonus recapture provisions as they apply to variable contract value that an owner would obtain a benefit from a bonus credit in a rising market because any earnings on the bonus credit amount would vest with him or her immediately. Over time this would, of course, cause the owner's share of both the Contract's variable contract value and the Account's net assets to be greater on a relative basis than it would have been without the bonus credit. Conversely, in a falling market an owner would suffer a detriment from a bonus credit because losses on the bonus credit amount also would ''vest'' with him or her immediately. As explained above, over time this would cause the owner's share of both the Contract's variable contract value and the Account's net assets to decrease on a relative basis.

6. Applicants do not believe that the dynamics of RLNY's or Golden American's proposed bonus credit provisions would violate Sections 2(a)(32) or 27(i)(2)(A) of the Act. To begin with, Section 2(a)(32) defines a redeemable security as one ''under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net asset value.'' Taken together, these two sections of the Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, the fact that the proposed bonus credit provisions have a dynamic element that may cause the relative ownership positions of RLNY or Golden American and a Contract owner to shift due to Account performance and the vesting schedule of such credits, would not cause the provisions to conflict with Sections 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

7. RLNY's or Golden American's granting of a bonus credit would have the result of increasing an owner's contract value in a way that could be viewed as the purchase of an interest in the Account at a price below net asset value. Similarly, RLNY's or Golden American's recapture of any bonus credit could be viewed as the redemption of such an interest at a price above net asset value. If such is the case, then the bonus credit provisions could be viewed as conflicting with Rule 22c–l under the Act. Applicants contend, however, that the bonus credits do not violate Rule 22c–1 under the Act. The bonus credit provisions do not give rise to either of the evils that Rule 22c–1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or other unfair results, including speculative trading practices.''

8. Applicants argue that the evils prompting the adoption of Rule 22c–1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares. The proposed bonus credit provisions pose no such threat of dilution. An owner's interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. The granting of a bonus credit does not reflect a reduction of that price. Instead, RLNY or Golden American will purchase with their own money on behalf of the owner, an interest in the Account equal to the bonus credit. Because any bonus credit will be paid from RLNY's or Golden American's general account and not from the assets of the Account, no dilution will occur as a result of the credit. Likewise, because RLNY or Golden American will use general account assets to increase an owner's total contract value, no dilution will occur from such an increase.

9. Recaptures of bonus credits result in a redemption of RLNY's interest in an owner's contract value or in the Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that RLNY or Golden American paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the

bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value. Because neither of the harms that Rule 22c–1 was intended to address arise in connection with the proposed bonus credit provisions, the provisions do not conflict with the Rule. Nonetheless, in order to avoid any uncertainty as to hill compliance with the Act, Applicants seek exemptions from Rule 22c–1.

10. The bonus credit recapture provisions are necessary for RLNY or Golden American to offer the bonus credits. It would be unfair to RLNY or Golden American to permit owners to keep their bonus credits upon their exercise of the Contracts' ''free look'' provision. Because no CDSC applies to the exercise of the ''free look'' provision, the owner could obtain a quick profit in the amount of the bonus credit at RLNY's or Golden American's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at RLNY's or Golden American's expense. In the event of such profits to owners or beneficiaries, RLNY or Golden American could not recover the cost of granting the bonus credits. This is because RLNY and Golden American intend to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, certain owners could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that RLNY or Golden American must provide. Therefore, the recapture provisions are a price of offering the bonus credits. RLNY and Golden American simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

11. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, RLNY's successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The exemption of these classes of persons is 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 because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

12. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about Account B and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Conclusion

Applicants submit that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

Based on the grounds summarized above, Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are 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, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18992 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48201; File No. SR–GSCC–2002–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change To Establish a Comprehensive Standard of Care and Limitation of Liability to its Members

July 21, 2003.

I. Introduction

On October 10, 2002, the Government Securities Clearing Corporation (''GSCC'') [1] filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–GSCC–2002–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on January 14, 2003.[3] The Commission received two comment letters in response to the proposed rule change.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of GSCC's rule change is to establish a comprehensive standard of care and limitation of liability with respect to its members. Historically, the Commission has left to user-governed clearing agencies the question of how to

[1] On January 1, 2003, MBS Clearing Corporation (''MBSCC'') was merged into the Government Securities Clearing Corporation (''GSCC'') under New York law, and GSCC was renamed the Fixed Income Clearing Corporation (''FICC''). The functions previously performed by GSCC are now performed by the Government Securities Division (''GSD'') of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division (''MBSD'') of FICC. The GSD succeeded to the GSCC proposed rule change upon the merger of MBSCC and GSCC. To avoid confusion and maintain consistency with the Notice, in this Order, we will continue to refer to GSCC instead of the GSD of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 47135 (January 7, 2003), 68 FR 1876.

[4] Letters from Dan W. Schneider, Counsel to the Association of Global Custodians (''AGC'') (March 24, 2003) and Jeffrey F. Ingber, Managing Director, General Counsel, and Secretary, Fixed Income Clearing Corporation (June 12, 2003).

allocate losses associated with, among other things, clearing agency functions.[5] In determining the appropriate standard of care, the Commission has reviewed clearing agency services on a case-by-case basis in order to balance the need for a high degree of care at clearing agencies with the effects that liabilities may have on clearing agency operations, costs, and safekeeping of securities and funds.[6] Because standards of care represent an allocation of rights and liabilities between a clearing agency and its members or participants, which are sophisticated financial entities, the Commission has refrained from establishing a unique federal standard of care and has allowed clearing agencies and other self-regulatory organizations and their participants to establish their own standards of care.[7]

GSCC believes that adopting a rule [8] limiting GSCC's liability to its members to direct losses caused by GSCC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action: (1) Memorializes an appropriate commercial standard of care that will protect GSCC from undue liability; (2) permits the resources of GSCC to be appropriately utilized for promoting the prompt and accurate clearance and settlement of securities; and (3) is consistent with similar rules adopted by other self-regulatory organizations and approved by the Commission.[9]

III. Comment Letters

The Commission received a comment letter from Dan W. Schneider, Counsel to AGC, and a response comment letter from GSCC. The AGC letter asserted that registered clearing agencies should be subject to a negligence standard of care in safeguarding funds and securities and in performing processing obligations relating to custody functions. In addition, registered clearing agencies like GSCC that provide the securities markets and the securities processing community with centralized essential utility services and that become focal points for concentrated risk should meet at least the same standard of care that is required of commercial custodians under Commission rules designed to protect investors. Finally, AGC opined that permitting registered clearing agencies that are central facilities in the national clearance and settlement system to conform their conduct to gross negligence while requiring bank custodians to adhere to a higher standard of care creates a liability differential for which no appropriate statutory or policy basis exists.

GSCC responded that the proposed rule change would not affect GSCC's standard of performance because registered clearing agencies such as GSCC are subject to rigorous regulatory standards for their operations under Section 17A of the Act. The proposed rule change only relates to GSCC's standard of liability and not to the Commission's regulatory operational standards for GSCC. Also, GSCC has operated for 15 years with a gross negligence standard of liability under SEC temporary registration orders without any financial loss to its members or third parties arising from a failure of performance by GSCC. Neither the Act nor prior Commission orders require that a particular level of liability for private rights of action be assumed by registered clearing agencies, as distinguished from the high regulatory standards imposed by the Commission for clearing agency operations under Section 17A. In addition, GSCC members are sophisticated parties who can best determine the allocation of GSCC risk for unintentional loss. GSCC pointed out that adoption of a universal simple negligence standard of liability for GSCC would likely result in a gap between the liability limitation of GSCC and the gross negligence liability limitation of clearing banks and other service providers to which GSCC is dependent for certain key operational services.

IV. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[10] The Commission believes that approval of GSCC's rule change is consistent with this Section because it will permit the resources of GSCC to be appropriately utilized for promoting the prompt and accurate clearance and settlement of securities.

Although the Act does not specify the standard of care that must be exercised by registered clearing agencies, the Commission has determined that a gross-negligence standard of care is acceptable for non-custodial functions where the parties contractually agree to limit liability.[11] GSCC's functions are

[5] Securities Exchange Act Release Nos. 20221 (September 23, 1983), 48 FR 45167 and 22940 (February 24, 1986), 51 FR 7169.

[6] *Id.*

[7] *Id.*

[8] The language of new Section 3 to Rule 39 is as follows: Section 3—Limitation on Liability of the Corporation Notwithstanding any other provision in the Rules:

(a) The Corporation will not be liable for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill the Corporation's obligations to its Members, other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency, of any third party, including, without limitation, any depository, custodian, sub-custodian, clearing or settlement system, transfer agent, registrar, data communication service or delivery service (''Third Party''), unless the Corporation was grossly negligent, engaged in willful misconduct, or in violation of Federal securities laws for which there is a private right of action in selecting such Third Party; and

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

[9] *See, e.g.*, Securities Exchange Act Release Nos. 37421 (July 11, 1996), 61 FR 37513 [SR–CBOE–96–02] and 37563 (August 14, 1996), 61 FR 43285 [SR–PSE–96–21].

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] In the release setting forth standards to be used by the Division of Market Regulation in evaluating clearing agency registration applications, the Division of Market Regulation urged clearing agencies to embrace a strict standard of care in safeguarding participants' funds and securities. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 4192. In the release granting permanent registration to The Depository Trust Company, the National Securities Clearing Corporation, and several other clearing agencies, however, the Commission indicated that it did not believe that sufficient justification existed at that time to require a unique federal standard of care for registered clearing agencies. Securities Exchange Act Release No. 20221 (October 3, 1983), 48 FR 45167. In a subsequent release, the Commission stated that the clearing agency standard of care and the allocation of rights and liabilities between a clearing agency and its participants applicable to clearing agency services generally may be set by the clearing agency and its participants. In the same release, the Commission stated that it should review clearing agency proposed rule changes in this area on a case-by-case basis and balance the need for a high degree of clearing agency care with the effect resulting liabilities may have on clearing agency operations, costs, and safeguarding of securities and funds. Securities Exchange Act Release No. 22940 (February 24, 1986), 51 FR 7169. Subsequently, in a release granting temporary registration as a clearing agency to The Intermarket Clearing Corporation, the Commission stated that a gross negligence standard of care may be appropriate for certain noncustodial functions that, consistent with minimizing risk mutualization, a clearing agency, its board of directors, and its members determine to allocate to individual service users. Securities Exchange Act release No. 26154 (October 3, 1988), 53 FR 39556. Finally, in a release granting the

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non-custodial in that it does not hold its members funds or securities. GSCC relies on clearing banks to perform custodial services for Government securities, which are uncertificated, and for funds. It is reasonable for GSCC, which is member-owned and governed, and its members to agree among themselves through board approval of the proposed rule change and through the proposed rule change notice and approval process to agree and to contract with one another in a cooperative arrangement as to how to allocate GSCC's liability among GSCC and themselves.

In its order granting temporary registration as a clearing agency, the Commission expressed concerned that GSCC's failure to perform accurately and timely the comparison service could adversely affect the ability of GSCC members to deliver securities and effect trade settlements. Considering the size of the Government securities market and the next-day time frame for trade settlements, the Commission deemed it appropriate that GSCC amend its standard of care to an ordinary negligence standard of care in performing all functions affecting member settlements of Government securities. [12] The Commission, recognizing that GSCC's members are best suited to allocate GSCC's rights and liabilities, has determined and finds that, given the non-custodial nature of GSCC's services, the extensive and rigorous financial and operational regulatory oversight to which GSCC is subject,[13] and GSCC's exemplary level of performance,[14] a gross negligence standard of care is appropriate for GSCC.

The Commission has given thoughtful and careful consideration to the comment letter of AGC and finds that AGC's concerns about the performance level of GSCC operating under a gross negligence standard of care and limitation of liability are addressed by the extensive regulatory oversight to which GSCC is subject as a registered clearing agency and the fact GSCC is not changing its financial and operational standards with the adoption of a gross negligence standard of care and limitation of liability.[15]

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 section 17A 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–GSCC–2002–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18990 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48200; File No. SR–GSCC–2002–11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change To Reduce the Permitted Use of Letters of Credit to Twenty-Five Percent of a Member's Required Clearing Fund Deposit

July 21, 2003.

I. Introduction

On October 10, 2002, the Government Securities Clearing Corporation (''GSCC'') [1] filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–GSCC–2002–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on June 17, 2003.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to reduce the permitted use of letters of credit (''LCs'') to twenty-five percent of a member's required clearing fund deposit. One of GSCC's most important risk management tools is its maintenance of clearing fund collateral. GSCC's clearing fund is comprised of cash, certain netting-eligible securities, and eligible LCs. The purposes served by the clearing fund are (1) to have on deposit from each netting member assets sufficient to satisfy any losses that may be incurred by GSCC as the result of the default by the member and the resultant close-out of that member's settlement positions and (2) to ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.

Currently, GSCC's rules permit up to 70 percent of a member's required clearing fund deposit to be in the form of LCs. Although GSCC believes that it will always receive funds from the presentment of an LC for payment, GSCC has recognized that in a period of market crisis there is the potential that GSCC might not receive the funds on a timely basis. To ensure that GSCC can always meet its liquidity needs on a timely basis in the unlikely event of a member default and in times of market crisis, GSCC is reducing the permitted use of LCs to 25 percent of a member's required clearing fund deposit. Thus, the minimum level of cash and securities required to be maintained on deposit will increase from 30 percent to 75 percent of a member's required clearing fund deposit.[4]

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approval of temporary registration as a clearing agency to the International Securities Clearing Corporation, the Commission indicated that historically it has left to user-governed clearing agencies the question of how to allocate losses associated with noncustodial, data processing, clearing agency functions and has approved clearing agency services embodying a gross-negligence standard of care. Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

[12] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[13] GSCC must have its rule changes approved by the Commission and is the subject of frequent Commission examinations for compliance with its rules and those of the Commission. As directed by Congress, the Commission cannot approve GSCC's proposed rule changes if they are inconsistent with Section 17A of the Act, including being inimical to the public interest or the protection of investors.

[14] Over the past 15 years, GSCC has demonstrated a high level of responsibility in performing its non-custodial functions and has had appropriate standards in place to ensure adequate performance. As a result, GSCC has operated without financial loss to its members or third parties arising from its failure to perform.

[15] The Commission notes that the rule change does not alleviate GSCC from liability for violation of the Federal securities laws where there exists a private right of action and therefore is not designed to adversely affect GSCC's compliance with the Federal securities laws and private rights of action that exist for violations of the Federal securities laws.

[16] 17 CFR 200.30–30(a)(12).

[1] On January 1, 2003, MBS Clearing Corporation (''MBSCC'') was merged into GSCC under New York law, and GSCC was renamed the Fixed Income Clearing Corporation (''FICC''). The functions previously performed by GSCC are now performed by the Government Securities Division (''GSD'') of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division (''MBSD'') of FICC. The GSD succeeded to the GSCC proposed rule change upon the merger of MBSCC and GSCC. To avoid confusion and maintain consistency with the Notice, in this Order we will continue to refer to GSCC as such. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 48016 (June 11, 2003), 68 FR 35925.

[4] The new LC limitation will not affect the requirement that certain non-US GSCC members post additional collateral in the form of LCs to protect GSCC against legal risk presented by the insolvency laws in those members' home countries. These members will not be required to increase the amount of their deposit that is in the form of cash and securities from 30 percent to 75 percent of their required clearing fund deposit.

III. Discussion

Section 17A(b)(3)(F) of the Act 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.[5] The Commission finds that GSCC's proposed rule change is consistent with this requirement because it will protect GSCC and its members by ensuring that GSCC has adequate liquidity resources in the event of member insolvency or during times of market crisis.

IV. 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 Section 17A 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–GSCC–2002–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18991 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48194; File No. SR–NYSE–2003–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Add NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4) to the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A''

July 17, 2003.

On May 5, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A'' for imposition of fines for minor violations of rules and/or policies (''List'') by adding to the List failure to comply with the provisions of NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4).

The proposed rule change was published for comment in the **Federal Register** on June 11, 2003.[3] The Commission received no comments on the proposal.

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[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6)[6] of the Act because it should enable the Exchange to appropriately discipline its members and others associated with its members for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the Exchange.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the NYSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2003–14) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18930 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48195; File No. SR–NYSE–2003–13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Amend the Fine Schedule for Individuals and Member Organizations Who Commit Minor Rule Violations Under Rule 476A

July 17, 2003.

On April 28, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the fine schedule for individuals and member organizations who commit minor rule violations under NYSE Rule 476A.

The proposed rule change was published for comment in the **Federal Register** on June 11, 2003.[3] The Commission received no comments on the proposal.

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[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6)[6] of the Act because it should enable the Exchange to appropriately discipline members and others

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[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47984 (June 4, 2003), 68 FR 35045.

[4] 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).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47985 (June 4, 2003), 68 FR 35046.

[4] 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).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

associated with its members for violation of Exchange rules.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the NYSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2003–13) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18932 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3526]

State of Indiana (Amendment #1)

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 17, 2003, the above numbered declaration is hereby amended to include Clay, Fulton, Morgan, Newton, Parke, and Vigo Counties in the State of Indiana as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on July 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Brown, Greene, Monroe, Owen, and Sullivan Counties in the State of Indiana; and Clark, Edgar, and Kankakee Counties in the State of Illinois. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 9, 2003, and for economic injury the deadline is April 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 18, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–18989 Filed 7–24–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3529]

State of Kansas

Seward County and the contiguous counties of Haskell, Meade, and Stevens in the State of Kansas; and Beaver and Texas Counties in the State of Oklahoma constitute a disaster area due to a severe thunderstorm accompanied by large hail and flooding that occurred on June 28 and June 29, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 15, 2003 and for economic injury until the close of business on April 19, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Forth Worth, TX 76155.

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 numbers assigned to this disaster for physical damage are 352911 for Kansas and 353011 for Oklahoma. For economic injury, the numbers are 9W4400 for Kansas and 9W4500 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 17, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–18987 Filed 7–24–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3531]

State of Texas

As a result of the President's major disaster declaration on July 17, 2003, I find that Calhoun, Jackson, Matagorda, Refugio, and Victoria Counties in the State of Texas constitute a disaster area due to damages caused by Hurricane Claudette occurring on July 15, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 16, 2003 and for economic injury until the close of business on April 19, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Ste., 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Aransas, Bee, Brazoria, De Witt, Goliad, Lavaca, San Patricio, and Wharton in the State of Texas.

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 to this disaster for physical damage is 353108. For

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

economic injury, the number is 9W5200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 21, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–18988 Filed 7–24–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax 202–395–6974.

(SSA)

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex, 6401 Security Blvd., Baltimore, MD 21235, Fax 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Application for Special Age 72-or-Over Monthly Payments—20 CFR, Subpart D, 404.380–.384—0960–0096.* Form SSA–19–F6 is needed to determine if an individual is entitled to Special Age 72 payments. Eligibility requirements will be evaluated based on the data collected on this form. The respondents are individuals who attained age 72 before 1972.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 3 hours.

2. *Statement of Self-Employment Income, CFR Subpart B, 404.101 and Subpart K, 404.1096—0960–0046.* The information collected on Form SSA–766 is used to determine if the individual will have at least the minimum amount of self-employment income needed for one or more quarters of coverage in the current year. Additional quarters of coverage may be credited on the basis of the information obtained, and benefit payments may be expedited where there are sufficient quarters of coverage to give the individual insured status. The respondents are self-employed persons applying for Social Security benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 417 hours.

3. *Childhood Disability Evaluation Form—20 CFR 416.924–0960–0568.* SSA and State Disability Determination Services (DDS) use the information collected on Form SSA–538 to record medical and functional findings regarding the severity of impairments of the children who claim SSI benefits based on disability. The form is used for initial determinations of eligibility, in appeals, and in initial continuing disability reviews. The respondents are employees of DDS responsible for these determinations.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 312,500 hours.

4. *Subpart T—State Supplementation Provisions—20 CFR 416.2095–2099—0960–0240.* Section 1618 of the Social Security Act contains pass-along provisions of the Social Security Amendments. These provisions require States that supplement the Federal SSI benefits pass along Federal cost-of-living increases to the individuals who are eligible for State Supplementary benefit payments. If the State fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under Title XIX of the Social Security Act. Regulations at 20 CFR 416.2099 require the States to report mandatory minimum and optional supplementary payment data to SSA. The information is used to determine compliance with the law and regulations. The respondents are States that supplement Federal SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 26.

Frequency of Response: 15 states report quarterly; 11 states report annually.

Average Burden per Response: 1 hour.

Estimated Annual Burden: 71.

5. *Representative Payee Report-Special Veterans Benefits Form—0960–0621.* SSA needs the information collected on form SSA–2001 to determine whether payments certified to the representative payee have been used properly and whether the representative payee demonstrates concern for the beneficiary's best interest. The form will be completed annually by representative payees receiving Special Veterans Benefit payments on behalf of beneficiaries who are outside of the United States. It will also be required when SSA has reason to believe a representative payee could be misusing the payments. The respondents are representative payees for beneficiaries who are receiving Special Veterans Benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 17 hours.

6. *You Can Make Your Payment by Credit Card—0960–0462.* SSA will use the information on Forms SSA–4588 and SSA–4589 to update the individual's social security record to reflect that a payment has been made on their overpayment and to effectuate payment through the appropriate credit card company. The respondents are Title II (Old-Age, Survivors and Disability Insurance) and Title XVI (Supplemental Security Income) debtors; and citizens requesting material through SSA.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 19,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,583 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Certification by Religious Group—20 CFR, Subpart K, 404.1075—0960–0093.* The data collected on Form SSA–1458 will be used to determine if a religious group meets the qualifications set out in section 1402(g) of the Internal Revenue Code, which permits its members to be exempt from the payment of self-employment taxes. The respondents are spokespersons for a religious group or sect.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 180.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 45 hours.

2. *Statement of Care and Responsibility for Beneficiary—20 CFR, Subpart U, 404.2020–.2025 & Subpart F, 416.620–.625–0960–0109.* Form SSA–788 is used to obtain information from the beneficiary's custodian about the representative payee applicant's concern and responsibility for the beneficiary. The respondents are individuals who have custody of a beneficiary, where someone else has filed to be the beneficiary's payee.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 21,667.

3. *Request for Reconsideration—Disability Cessation—20 CFR, Subpart J, 404.909 & Subpart N, 416.1409–0960–0349.* Form SSA–789 is used by SSA to schedule disability hearings and to develop additional evidence/information for claimants whose disability is found to have ceased, not to have existed, or to no longer be disabling. The information will also be used to determine if an interpreter is needed for the disability hearing. The respondents are claimants under Title II & XVI of the Social Security Act who wish to request reconsideration of disability cessation.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 10–13.5 minutes.

Estimated Annual Burden: 10,045 hours.

4. *Psychiatric Review Technique—20 CFR, Subpart P, 404.1520(a) Subpart I, 416.920(a)–0960–0413.* Form SSA–2506–BK assists the Disability Determination Services (DDS) in evaluating mental impairments by helping to (1) identify the need for additional evidence for impairment severity; (2) consider aspects of the mental impairment relevant to the individual's ability to perform work-related mental functions; and (3) organize and present the findings in a clear, concise and consistent manner. The respondents are 54 State DDSs administering Title II and title XVI disability programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Responses: 1,253,703.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 313,426 hours.

5. *Request for Reconsideration—20 CFR, Subpart J, 404.907–.921 and Subpart N, 416.1407–.1421–0960–0622.* The information collected on Form SSA–561 is used by SSA to document and initiate the reconsideration process for determining entitlement to Social Security benefits (Title II), Supplemental Security Income payments (Title XVI), and Special Veterans benefits (Title VIII). The respondents are individuals filing for such reconsideration.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,455,000.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 194,000 hours.

6. *Individuals or Agents Seeking Information or Testimony in non-Social Security Administration Cases—20 CFR 403.120–0960–0619.* 20 CFR 403.120 establishes a procedure whereby an individual, organization or governmental entity may request testimony of an agency employee in a legal proceeding to which the agency is not a party. The request, which must be in writing to the Commissioner, must fully explain the nature and the relevance of the sought testimony and include the time, date, and place where the testimony will be given. Respondents are individuals or their representatives who require testimony from Social Security Administration employees in a legal proceeding to which the Social Security Administration is not a party.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 40.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 40.

7. *Medical Consultant's Review of Physical Functional Capacity Assessment—20 CFR 404.1520(a), 20 CFR 404.1640, 20 CFR 404.1645, 20 CFR 404.1643, and 20 CFR 416.920(a)—OMB #0960–NEW.* The SSA–392 is used by the Social Security Administration's regional review component to facilitate the medical consultant's review of the Physical Residual Functional Capacity Form, the SSA–4734. The SSA–392 records the reviewing medical consultant's assessment of the SSA–4734 that was prepared by the adjudicating component. The SSA–392 is required for each SSA–4734 form completed. The respondents are the medical/psychological consultants responsible for reviewing the SSA–4734.

Type of Request: Request for approval of new collection.

Number of Respondents: 256.

Frequency of Response: 359.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 18,380 hours.

8. *Medical Consultant's Review of Mental/Functional Capacity Assessment Form, SSA 392 SUP.—20 CFR 404.1640, 20 CFR 404.1645, 20 CFR 404.1643, 20 CFR 404.1520(a) and 20 CFR 416.920(a)—0960–NEW.* Medical Consultant's Review of Mental Residual Functional Capacity Form, SSA–392 SUP, is used by the Social Security Administration's regional review component to facilitate the medical/psychological consultant's review of the Mental Residual Functional Capacity Form or SSA–4734–SUP. The form records the reviewing medical/psychological consultant's assessment of the SSA–4734–SUP prepared by the adjudicating component and whether the reviewer agrees or disagrees with the manner in which the SSA–4734–SUP was completed. The SSA–392–SUP is required for each SSA–4734–SUP form completed. The respondents are the medical/psychological consultants

responsible for reviewing the SSA–4734–SUP.

Type of Request: Request for approval of new collection.

Number of Respondents: 256.

Frequency of Response: 359.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 18,380.

9. *Request for Withdrawal of Application—20 CFR 404.460—0960–0015.* Request for Withdrawal of Application—0960–0015. Form SSA–521 is completed by the Social Security Administration (SSA) when an individual wishes to withdraw his or her application for Social Security benefits. The respondents are individuals who wish to withdraw their applications for benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 8,333 hours.

Dated: July 21, 2003.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–18906 Filed 7–24–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meetings.

DATES: August 26, 2003, 9:30 a.m.–5:30 p.m., August 27, 2003, 9 a.m.–5 p.m., August 28, 2003, 9 a.m.–1 p.m.

ADDRESSES: Detroit Marriott Renaissance Center, Renaissance Center (East Jefferson Street), Detroit, MI 48243, Phone: (313) 568–8000.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The topics for the meeting will include presentations of briefing papers prepared for the Panel, establishment of priorities for the coming year and agency updates from SSA, the Department of Education and the Department of Health and Human Services.

The Panel will meet in person commencing on Tuesday, August 26, 2003 from 9:30 a.m. to 5:30 p.m.; Wednesday, August 27, 2003 from 9 a.m. to 5 p.m.; and Thursday, August 28, 2003 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held on Tuesday, Wednesday, and Thursday, August 26, 27, and 28, 2003. Public testimony will be heard in person on Tuesday, August 26, 2003 from 2:30 p.m. to 3 p.m. and on Thursday, August 28, 2003 from 9 a.m. to 9:30 a.m. Members of the public must schedule a time slot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA implementation, no longer than 5 pages, may be submitted in person or by mail, fax or e-mail on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to: Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone: contact Kristen Breland at (202) 358–6423.
- Fax: (202) 358–6440.
- E-mail: *TWWIIAPanel@ssa.gov*.

Dated: July 21, 2003.

Carol Brenner,

Designated Federal Official.

[FR Doc. 03–18969 Filed 7–24–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4419]

30-Day Notice of Proposed Information Collection: Form DS–2029/SS–5, Application for Consular Report of Birth Abroad of a Citizen of the United States of America; OMB Control Number 1405–0011

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a previously approved collection.

Originating Office: CA/OCS.

Title of Information Collection: 1405–0011, Application for Consular Report of Birth Abroad of a Citizen of the United States.

Frequency: On occassion.

Form Number: DS–2029.

Respondents: Parents or legal guardians of American citizen children born overseas.

Estimated Number of Respondents: approximately 46,000 per year.

Average Hours Per Response: approximately 20 minutes, or .33 of an hour.

Total Estimated Burden: 15,333 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Michael Meszaros, who may be reached on 202–312–9750. Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to the State Department Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: July 11, 2003.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–19001 Filed 7–24–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4418]

Bureau of Nonproliferation; Imposition of Missile Proliferation Sanctions Against a North Korean Entity

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a North Korean entity has engaged in activities that require the imposition of measures pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142). On import ban issues, Licensing Division, Office of Foreign Assets Control, Department of the Treasury (202–622–2480). On U.S. Government procurement ban issues, Gladys Gines, office of the Procurement Executive, Department of State (703–516–1621).

SUPPLEMENTARY INFORMATION: Pursuant to section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)); section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2410(b)(1)), as carried out under Executive Order 13222 of August 17, 2001 (hereinafter cited as the ''Export Administration Act of 1979''); and Executive Order 12851 of June 11, 1993; the U.S. Government determined on July 17, 2003 that the following foreign person has engaged in missile technology proliferation activities that require the imposition of the sanctions described in sections 73(a)(2)(B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B) and (C) and sections 11B(b)(1)(B)(ii) and (iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(ii) and (iii) on this person: Changgwang Sinyong Corporation (North Korea) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on this person for three years and eight months:

(A) Denial of all new individual licenses for the transfer to the sanctioned entity of all items on the U.S. Munitions List and all items the export of which is controlled under the Export Administration Act; and,

(B) Denial of all U.S. Government contracts with the sanctioned entity; and

(C) Prohibition on the importation into the U.S. of all products produced by the sanctioned entity.

With respect to items controlled pursuant to the Export Administration Act of 1979, the above export sanction only applies to exports made pursuant to individual export licenses.

Additionally, because North Korea is a country with a non-market economy that is not a former member of the Warsaw Pact (as referenced in the definition of ''person'' in section 74(8)(B) of the Arms Export Control Act), the following sanctions shall be applied for three years and eight months to all activities of the North Korean government relating to the development or production of missile equipment or technology and all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) Denial of all new individual licenses for the transfer to the government activities described above of all items on the U.S. Munitions List; and,

(B) Denial of all U.S. Government contracts with the government activities described above; and

(C) Prohibition on the importation into the U.S. of all products produced by the government activities described above.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in Executive Order 12851 of June 11, 1993.

Dated: July 21, 2003.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–19000 Filed 7–24–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 4, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–4755.

Date Filed: July 1, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 22, 2003.

Description: Contingent Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and 41108 and Subpart B, requesting renewal of its certificate of

public convenience and necessity for Route 756, which authorizes Delta to engage in foreign air transportation of persons, property, and mail between a point or points in the United States, the intermediate point Paris, France, and Johannesburg, South Africa.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–18916 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Granting Exemption

AGENCY: Department of Transportation.

ACTION: Notice of Order Granting Exemption (Docket OST–02–13896)—Order 2003–7–22.

SUMMARY: The Department of Transportation has granted an application by the International Air Transport Association (IATA) to permit IATA to implement certain resolutions and recommended practices of its worldwide Cargo Services Conference (CSC), without filing the resolutions and recommended practices for prior approval by the Department and without obtaining immunity from the U.S. antitrust laws.

FOR FUTHER INFORMATION CONTACT: Mr. John Kiser or Ms. Bernice Gray, Pricing & Multilateral Affairs Division (X–43, Room 6424), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2435.

Dated: July 18, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–18913 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Six Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on six currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before September 23, 2003.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, the clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0033: Representatives of the Administrator, FAR 183. Title 49, U.S.C., section 44702, authorizes appointment of properly qualified private persons to be representatives of the Administrator for examining, testing, and certifying airmen for the purpose of issuing them airmen certificates. The information collected is used to determine eligibility of the representatives. The current estimates annual reporting burden is 3,974 hours.

2. 2120–0563: Notice and Approval of Airport Noise and Access Restrictions. The Airport Noise and Capacity Act of 1990 mandates the formulation of a national noise policy. One part of the mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and 3 aircraft. Respondents are airport operators proposing voluntary agreements and/or mandatory restrictions on Stage 2 and 3 aircraft operations, and aircraft operators that request reevaluation of a restriction. The current estimated annual reporting burden is 30,000 hours.

3. 2120–0611: Associated Administrator for Commercial Space Transportation (AST) Customer Service Survey. The FAA Office of the Associated Administrator for Commercial Space Transportation conducts a survey to obtain industry input on the customer service standards which have been developed and distributed to industry customers. This is a requirement of the White House NPR Customer Service Initiatives. AST collects and analyzes the data for results. The current estimated annual reports burden is 300 hours.

4. 2120–0618: Overflight billing and Collection Customer Information Form. This information is needed to obtain accurate billing information for FAA air traffic and related services for certain aircraft that transit U.S. controlled airspace but neither take off from, nor land in, the United States. The current estimated annual reporting burden is 50 hours.

5. 2120–0663: Service Difficulty Report (SDR). September 15, 2000, the Federal Aviation Administration (FAA) published a rule amending the reporting requirements for air carriers and certificates domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. This action was prompted by an internal FAA review of the effectiveness of the reporting system and by air carriers industry's concern over the quality of the data being reported. The reports submitted by certificate holders and certificated repair stations provide the FAA with airworthiness statistical data necessary for planning, directing, controlling, and evaluating certain assigned safety-related programs. The current estimated annual reporting burden associated with this revision is 6,107 hours.

6. 2120–0665: Safe Disposition of Life-Limited Aircraft Parts. This action responds to the Wendell H. Ford Investment Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part be required to have a method to prevent the installation of that part after it has reached its life limit. This action reduces the risk of life-limited aircraft parts being used beyond their life limits. This collection also requires that manufacturers of life-limited parts provide marking instructions, when requested. The current estimated annual reporting burden is 52,000 hours.

Issued in Washington, DC on July 18, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 03–18921 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–01–03]

Factors To Consider When Reviewing an Applicant's Proposed Human Factors Methods of Compliance for Flight Deck Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy; correction.

SUMMARY: The Federal Aviation Administration (FAA) announces a correction to a final policy memorandum that clarifies current FAA policy with respect to compliance with human factors-related regulations during certification projects on transport category airplanes.

DATE: This final policy was issued by the Transport Airplane Directorate on February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Boyd, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane & Flightcrew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1138; fax (425) 227–1320; e-mail: *9-ANM-111-human-factors@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2003, the FAA issued policy memorandum number ANM–01–03 on the subject of guidance with respect to the recommended content of a Human Factors Certification Plan. After issuance and publication of the notice of final policy, an inadvertent error in the memo was brought to our attention. The error occurs in the ''Effect of Policy'' paragraph, second sentence. This sentence is corrected to read: ''The general policy stated in this document does *not* constitute a new regulation or create what the courts refer to as a 'binding norm.' '' The error has been corrected and the revised memorandum, ANM–01–03(A) is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.*

If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on July 14, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18920 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Riverside County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of withdrawal.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Bridge replacement, River Road Bridge, Riverside County, California will be withdrawn; and an Environmental Assessment (EA) in lieu of an EIS is being prepared for this proposed highway project.

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Project Development and Environment Unit, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), conducted studies of the potential environmental impacts associated with the proposed highway project to replace River Road Bridge, in Riverside County, California. During the course of conducting these studies and coordinating with regulatory and resource agencies, it was found that many of the potential environmental issues that led to issuing the Notice of Intent were not significant. In addition, changes to avoid or minimize potential impacts identified in early scoping have been made to the designs. One significant change in minimizing impacts is to replace the existing bridge with a significantly shorter bridge than originally planned (800 ft vs. 3000 ft), as well as utilizing stage construction in lieu of a full detour. The FHWA has determined that the proposed project is not likely to result in significant impacts to the environment; that an EA would be an appropriate environmental document for the project; and that the Notice of Intent, available on the **Federal Register** should be withdrawn.

The EA will be available for public inspection prior to the public meeting. Comments or questions concerning this proposed action and the determination that an EA is the proper environmental document should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: July 21, 2003.

Cesar Perez,

Team Leader, Project Development and Environment—South Sacramento, California.

[FR Doc. 03–18953 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver allows ticket vending machine manufacturers to install the Cash Code bill-handling unit and count it as domestic for purposes of Buy America compliance. It is predicated on the non-availability of the item domestically and was granted on June 11, 2003, for the period of two years. This notice shall insure that the public is aware of this waiver.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: *See* waiver below.

Issued: July 22, 2003.

Jennifer L. Dorn,

Administrator.

June 11, 2003.

Mr. Val Levitan,

Senior V.P. Sales & Marketing, Cash Code, 553 Basaltic Road, Concord, Ontario Canada L4K 4W8

Dear Mr. Levitan: This letter responds to your correspondence of May 8, 2003, in which you request a non-availability waiver of the Buy America requirements for certain bill-handling units manufactured for use in ticket vending machines. These bill-handling units accept, validate, and mechanically escrow banknotes of various denominations until a transaction is complete. For the reasons below, I have determined that a waiver is appropriate here.

The Federal Transit Administration's (FTA) requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j).

However, section 5323(j)(2)(B) states that those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation also provides that a waiver may be requested ''for a specific item or material that is used in the production of a manufactured product.'' 49 CFR 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. See, 49 CFR 661.7(g) and 49 CFR 661.9(d).

You state that there are no U.S. manufacturers of this component with a functionally equivalent product. This assertion is supported by GFI Genfare, a ticket vending machine manufacturer and potential end user of this component. GFI Genfare conducted a market survey, the results of which affirmed that there is no U.S. manufacturer of an equivalent bill-handling unit. FTA also posted a request for comments on this matter on our website and received no comments. FTA has granted similar waivers to other bill-handling unit manufacturers, Mars Electronics and Toyocom, U.S.A., also based on the non-availability of a U.S. alternative.

Based on the above-referenced information, I have determined that the grounds for a ''non-availability'' waiver exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), a waiver is hereby granted for manufacture of the BB–5001/2/3/4 bill-handling unit for a period of two years. In order to insure that the public is aware of this waiver it will be published in the **Federal Register**. If you have any questions, please contact Meghan Ludtke at (202) 366–1936.

Very truly yours,
Gregory B. McBride,
Deputy Chief Counsel.

[FR Doc. 03–19012 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 01–9362; Notice 3]

Saleen, Inc.; Receipt of Application for Extension of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Saleen, Inc., of Irvine, California, has applied for an extension of its temporary exemption from the automatic restraint requirements of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.* The basis of the request is that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith. 49 U.S.C. 30113(b)(3)(B)(i).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

In June 2001, NHTSA granted Saleen a two-year hardship exemption from S4.1.5.3 of Standard No. 108 (66 FR 33298), expiring July 1, 2003. The reader is referred to that notice for background information on the company in support of its original petition. Because Saleen's application for renewal was received more than 60 days before the expiration of the extension, the exemption will remain in effect until the Administrator has made a decision on its request (49 CFR 555.8(e)).

Saleen's temporary exemption covers its model S7. It had anticipated shipping its initial production of cars in July 2001. However, it was not able to do so until March 2003, when it received Certificates of Conformity for the 2003 model year from the Environmental Protection Agency and the California Air Resources Board. Between then and June 11, 2003, it sold and shipped eight S7s. It hopes to be able to ship a total of 36 S7s by the end of the year. Saleen's other line of business is the alteration of Ford Mustangs. However, the company has ''sustained a major slowdown'' in sales of these vehicles which it attributes ''to the downturn in the U.S. economy.'' The company has produced only 79 Saleen Mustangs as of June 11, 2003, compared with 327 in the comparable period in 2002. Its cumulative net losses in the three years preceding its original petition were $9,716,334; this has been only slightly ameliorated in the most current three-year period, to a cumulative net loss of $8,832,999.

Saleen had originally assumed that it needed 20 months and $3,000,000 for the development of air bags, but in the absence of sales, did not generate these funds. According to its petition, ''development delays almost completely exhausted all of our economic resources necessary to stay in business, let alone the development of air bags.'' One of the economic consequences is the shrinking of its payroll from 122 employees to 96. The company has asked for a three-year extension of its original two-year exemption in order to generate funds that would allow it to comply with the Advanced Air Bag requirements, S14 of Standard No. 208, which were issued during the period of its exemption. According to its projection of sales, it believes that it will be financially able to begin development of advanced air bags by July 2004. It anticipates that the project will take 24 months and $3,800,000, and that it will be able to comply with S5.1.1(b)(1) on September 1, 2006.

If the petition is denied, the company would have to cease the production and sale of the S7, and estimates that its earnings before taxes would fall to $7,000.

The company argued that a temporary exemption is in the public interest because the S7 ''is a unique supercar designed and produced in the United States utilizing many U.S. sourced components.'' An exemption would also allow it to maintain its payroll of 96 full time employees and to continue its purchase of U.S.-sourced components for the Mustangs that it modifies. Its business ''with U.S. suppliers indirectly provides employment for several hundred other Americans.'' An exemption would be consistent with vehicle safety objectives because the S7 otherwise will conform to all applicable Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10 a.m. until 5 p.m. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 25, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: July 17, 2003.

Stephen R. Kratzke,
Associate Administrator for Rulemaking.

[FR Doc. 03–18915 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34380]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to

grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) between BNSF milepost 29.9 near Fremont, NE, and BNSF milepost 104.1 near Ferry, NE, a distance of 74.2 miles.

The transaction is scheduled to become effective on August 31, 2003, and the authorization is scheduled to expire on or about October 20, 2003. The purpose of the temporary rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights-BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34380, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Robert T. Opal, 1416 Dodge St., Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 17, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18727 Filed 7–24–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34372]

Heritage Railroad Corporation—Lease and Operation Exemption—Rail Line of United States Department of Energy

Heritage Railroad Corporation (HRRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate a 7-mile rail line owned by the United States Department of Energy (DOE) from milepost 0.0 at a point of connection with a rail line of Norfolk Southern Railway Company at Blair, TN, to the end of the line at milepost 7.0 at East Tennessee Technology Center near Oak Ridge, TN. The lease includes 24 spur tracks, totaling approximately 7.5 miles, for a combined total of approximately 14.5 miles of track. HRRC certifies that the projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

HRRC states that it had entered into a management agreement with Southern Freight Logistics, LLC (SFL), effective September 30, 2000, wherein SFL was given exclusive rights to provide freight service on the line until September 14, 2005.[1] HRRC could terminate the management agreement by providing SFL with 90 days' written notice. HRRC provided such notice by letter dated June 16, 2003. Nevertheless, HRRC is willing to allow SFL to continue using the line after September 14, 2003, under new terms and conditions.

HRRC also states that it does not intend to consummate the transaction and take over operations until the 90-day notice of termination of the SFL management agreement has expired, on or about September 14, 2003. The earliest the transaction could have been consummated was July 8, 2003 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34372, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: July 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18728 Filed 7–23–03; 9:14 am]

BILLING CODE 4915–00–P

[1] Prior to the management agreement, SFL leased the line from HRRC's predecessor. *See Southern Freight Logistics, LLC-Lease and Operation Exemption-Community Reuse Organization of East Tennessee,* STB Finance Docket No. 33392 (STB served May 15, 1997).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 11, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15586.
Date Filed: July 8, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote, 311 PTC123 0244 dated 8 July 2003, South Atlantic Special Passenger Amending Resolution from Brazil r1–r5, Intended effective date: 1 August 2003.

Docket Number: OST–2003–15587.
Date Filed: July 8, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–ME 0167 dated 8 July 2003, TC2 Europe-Middle East Expedited Resolutions r1–r12, Intended effective date: 15 August 2003.

Docket Number: OST–2003–15657.
Date Filed: July 11, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 1071 dated 11 July 2003, Mail Vote 312—Resolution 024a, TC2/12/23/123 Establishing Passenger Fares and Related Charges—Iraq, CTC COMP 0448 dated 11 July 2003, Mail Vote 313—Resolution 033a, TC2/12/23/123 Establishing Cargo Rates, Charges and Amounts—Iraq, Intended effective date: 1 August 2003.

Docket Number: OST–2003–15658.
Date Filed: July 11, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 314—Resolution 002c
PTC2 ME 0126 dated 15 July 2003
TC2 Within Middle East
Special Amending Resolution r1–r8,
Intended effective date: 15 August 2003.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–18917 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Renewal of the Treasury Borrowing Committee of the Bond Market Association

ACTION: Notice of renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92–463; 5 U.S.C. App. 2), with the concurrence of the General Services Administration, the Secretary of the Treasury has determined that renewal of the Treasury Borrowing Advisory Committee of The Bond Market Association (the ''Committee'') is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Treasury by law.

EFFECTIVE DATE: July 13, 2003.

FOR FURTHER INFORMATION CONTACT: Jeff Huther, Deputy Director, Office of Market Finance, (202) 622–2630.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Treasury responsibilities for federal financing and public debt management.

The Committee meets to consider special items on which its advice is sought pertaining to immediate Treasury funding requirements and pertaining to longer term approaches to manage the national debt in a cost-effective manner. The Committee usually meets immediately before the Treasury announces each mid-calendar quarter funding operation, although special meetings also may be held.

Membership consists of 20–25 individuals who are experts in the government securities market and who are involved in senior positions in debt markets as institutional investors, investment advisors, or as dealers in government securities.

The Designated Federal Official for the Advisory Committee is the Associate Director of the Office of Market Finance, reporting through the Assistant Secretary for Financial Markets. The Treasury Department filed copies of the Committee's renewal charter with appropriate committees in Congress.

Dated: July 21, 2003.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 03–18929 Filed 7–24–03; 8:45 am]

BILLING CODE 4810–25–M

Federal Register

Friday,
July 25, 2003

Part II

Federal Communications Commission

47 CFR Parts 64 and 68
Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CG Docket No. 02–278, FCC 03–153]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we revise the current Telephone Consumer Protection Act of 1991 (TCPA) rules, and adopt new rules to provide consumers with several options for avoiding unwanted telephone solicitations. These new rules establish a national do-not-call registry, set a maximum rate on the number of abandoned calls, require telemarketers to transmit caller ID information, and modify the Commission's unsolicited facsimile advertising requirements.

DATES: Effective August 25, 2003, except for § 64.1200(c)(2), which contains the national do-not-call rules, and will become effective on October 1, 2003; § 64.1200(a)(5) and (a)(6), which contain the call abandonment rules, and will become effective on October 1, 2003; § 64.1601(e), which contains the caller ID rules, and will become effective on January 29, 2004; and §§ 64.1200(a)(3)(i), (d)(1), (d)(3), (d)(6), (f)(3), and (g)(1), which contain information collection requirements under the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections. Written comments by the public on the new and modified information collections are due September 23, 2003.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in CG Docket No. 02–278, FCC 03–153, adopted on June 26, 2003 and released July 3, 2003. The full text of this document is available at the Commission's Web site (*http://www.fcc.gov*) on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice) or (202) 418–7365 (tty).

Paperwork Reduction Act: The Report and Order contains either new and/or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Report and Order as required by the PRA. Public and agency comments are due September 23, 2003.

Synopsis

1. We revise the TCPA rules and adopt new rules to provide consumers with several options for avoiding unwanted telephone solicitations. Specifically, we establish with the Federal Trade Commission (FTC) a national do-not-call registry for consumers who wish to avoid unwanted telemarketing calls. The national do-not-call registry will supplement the current company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. To address the more prevalent use of predictive dialers, we have determined that a telemarketer may abandon no more than three percent of calls answered by a person and must deliver a prerecorded identification message when abandoning a call. The new rules will also require all companies conducting telemarketing to transmit caller identification (caller ID) information, when available, and prohibit them from blocking such information. The Commission has revised its earlier determination that an established business relationship constitutes express invitation or permission to receive an unsolicited fax, and we have clarified when fax broadcasters are liable for the transmission of unlawful facsimile advertisements.

National Do-Not-Call List

2. *Section 227.* The TCPA requires the Commission to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. In so doing, 47 U.S.C. 227(c)(1) directs the Commission to ''compare and evaluate alternative methods and procedures'' including the use of electronic databases and other alternatives in protecting such privacy rights. Pursuant to 47 U.S.C. 227(c)(3), the Commission ''may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase.'' If the Commission determines that adoption of a national database is warranted, 47 U.S.C. 227(c)(3) enumerates a number of specific statutory requirements that must be satisfied. Additionally, 47 U.S.C. 227(c)(4) requires the Commission to consider the different needs of telemarketers operating on a local or regional basis and small businesses. In addition to our general authority over interstate communications, section 2(b) of the Communications Act specifically provides the Commission with the authority to apply section 227 to intrastate communications.

3. We conclude that the record compiled in this proceeding supports the establishment of a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations. Consistent with the mandate of Congress in the Do-Not-Call Implementation Act (Do-Not-Call Act), the national do-not-call rules that we establish in this order ''maximize consistency'' with those of the FTC. The record clearly demonstrates widespread consumer dissatisfaction with the effectiveness of the current rules and network technologies available to protect consumers from unwanted telephone solicitations. Indeed, many consumers believe that with the advent of such technologies as predictive dialers that the vices of telemarketing have become inherent, while its virtues remain accidental. We have compared and evaluated alternative methods to a national do-not-call list for protecting consumer privacy rights and conclude that these alternatives are costly and/or ineffective for both telemarketers and consumers. *See* 47 U.S.C. 227(c)(1)(A).

4. A national do-not-call registry that is supplemented by the amendments made to our existing rules will provide consumers with a variety of options for managing telemarketing calls. Consumers may now: (1) Place their number on the national do-not-call list; (2) continue to make do-not-call requests of individual companies on a case-by-case basis; and/or (3) register on the national list, but provide specific companies with express permission to call them. Telemarketers may continue to call individuals who do not place their numbers on a do-not-call list and consumers with whom they have an established business relationship. We believe this result is consistent with Congress' directive in the TCPA that ''[i]ndividuals'' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.'' *See TCPA*, Section 2(9), *reprinted* in 7 FCC Rcd at 2744.

5. We agree with Congress that consistency in the underlying regulations and administration of the national do-not-call registry is essential to avoid consumer confusion and regulatory uncertainty in the telemarketing industry. In so doing, we emphasize that there will be one centralized national do-not-call database of telephone numbers. The FTC has set up and will maintain the national database, while both agencies will coordinate enforcement efforts pursuant to a forthcoming Memorandum of Understanding. The states will also play an important role in the enforcement of the do-not-call rules. The FTC has received funding approval from Congress to begin implementation of the national do-not-call registry. Because the FTC lacks jurisdiction over certain entities, including common carriers, banks, insurance companies, and airlines, those entities would be allowed to continue calling individuals on the FTC's list absent FCC action exercising our broad authority given by Congress over telemarketers. In addition, the FTC's jurisdiction does not extend to intrastate activities. Action by this Commission to adopt a national do-not-call list, as permitted by the TCPA, requires all commercial telemarketers to comply with the national do-not-call requirements, thereby providing more comprehensive protections to consumers and consistent treatment of telemarketers.

National Do-Not-Call Registry

6. Pursuant to our authority under 47 U.S.C. 227(c), we adopt a national do-not-call registry that will provide residential consumers with a one-step option to prohibit unwanted telephone solicitations. This registry will be maintained by the FTC. Consistent with the FTC's determination, the national registry will become effective on October 1, 2003. Subject to certain exemptions, telemarketers will be prohibited from contacting those consumers that register their telephone numbers on the national list. In reaching this conclusion, we agree with the vast majority of consumers in this proceeding and the FTC that a national do-not-call registry is necessary to enhance the privacy interests of those consumers that do not wish to receive telephone solicitations. In response to the widespread consumer dissatisfaction with telemarketing practices, Congress has recently affirmed its support of a national do-not-call registry in approving funding for the FTC's national database. *See* H.R. J. Res. 2, 108th Congress at 96 (2003). *See also* H.R. REP. NO. 108–8 at 3 (2003), reprinted in 2003 U.S.C.C.A.N. 688, 670 (''[i]t is the strongly held view of the Committee that a national do-not-call list is in the best interest of consumers, businesses and consumer protection authorities. This legislation is an important step toward a one-stop solution to reducing telemarketing abuses.''). In so doing, Congress has indicated that this Commission should adopt rules that ''maximize consistency'' with those of the FTC. The record in this proceeding is replete with examples of consumers that receive numerous unwanted calls on a daily basis. The increase in the number of telemarketing calls over the last decade combined with the widespread use of such technologies as predictive dialers has encroached significantly on the privacy rights of consumers. For example, the effectiveness of the protections afforded by the company-specific do-not-call rules have been reduced significantly by dead air and hang-up calls that result from predictive dialers. In these situations, consumers have no opportunity to invoke their do-not-call rights and the Commission cannot pursue enforcement actions. Such intrusions have led many consumers to disconnect their phones during portions of the day or avoid answering their telephones altogether. The adoption of a national do-call-list will be an important tool for consumers that wish to exercise control over the increasing number of unwanted telephone solicitation calls.

7. Although some industry commenters attempt to characterize unwanted solicitation calls as petty annoyances and suggest that consumers purchase certain technologies to block unwanted calls, the evidence in this record leads us to believe the cumulative effect of these disruptions in the lives of millions of Americans each day is significant. As a result, we conclude that adoption of a national do-not-call list is now warranted. We believe that consumers should, at a minimum, be given the opportunity to determine for themselves whether or not they wish to receive telephone solicitation calls in their homes. The national do-not-call list will serve as an option for those consumers who have found the company-specific list and other network technologies ineffective. The telephone network is the primary means for many consumers to remain in contact with public safety organizations and family members during times of illness or emergency. Consumer frustration with telemarketing practices has reached a point in which many consumers no longer answer their telephones while others disconnect their phones during some hours of the day to maintain their privacy. We agree with consumers that incessant telephone solicitations are especially burdensome for the elderly, disabled, and those that work non-traditional hours. Persons with disabilities are often unable to register do-not-call requests on many company-specific lists because many telemarketers lack the equipment necessary to receive that request. Given the record evidence, along with Congress's recent affirmative support for a national do-not-call registry, we adopt a national do-not-call registry. We are mindful of the need to balance the privacy concerns of consumers with the interests of legitimate telemarketing practices. Therefore, we have provided for certain exemptions to the national do-not-call registry.

8. While we agree that concerns regarding the cost, accuracy, and privacy of a national do-not-call database remain relevant, we believe that circumstances have changed significantly since the Commission first reviewed this issue over a decade ago such that they no longer impose a substantial obstacle to the implementation of a national registry. As several commenters in this proceeding note, advances in computer technology and software now make the compilation and maintenance of a national database a more reasonable proposition. In addition, considerable experience has been gained through the implementation of many state do-not-

call lists. In 1992, it was estimated by some commenters that the cost of establishing such a list in the first year could be as high as $80 million. Congress has recently reviewed and approved the FTC's request for $18.1 million to fund the national do-not-call list. We believe that the advent of more efficient technologies and the experience acquired in dealing with similar databases at the state level is responsible for this substantial reduction in cost.

9. Similarly, we believe that technology has become more proficient in ensuring the accuracy of a national database. The FTC indicates that to guard against the possibility of including disconnected or reassigned telephone numbers, technology will be employed on a monthly basis to check all registered telephone numbers against national databases, and remove those numbers that have been disconnected or reassigned. The length of time that registrations remain valid also directly affects the accuracy of the registry as telephone numbers change hands over time. We conclude that the retention period for both the national and company-specific do-not-call requests will be five years. *See FTC Order*, 68 FR 4580 at 4640 (January 29, 2003). Our rules previously required a company-specific do-not-call request to be honored for ten years. *See* 47 CFR 64.1200(e)(2)(vi). Five years is consistent with the FTC's determination and our own record that reveals that the current ten-year retention period for company-specific requests is too long given changes in telephone numbers. Consumers must also register their do-not-call requests from either the telephone number of the phone that they wish to register or via the Internet. The FTC will confirm the accuracy of such registrations through the use of automatic number identification (ANI) and other technologies. The term ''ANI'' refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users. 47 CFR 64.1600(b). We believe that a five-year registration period coupled with a monthly purging of disconnected telephone numbers adequately balances the need to maintain accuracy in the national registry with any burden imposed on consumers to re-register periodically their telephone numbers.

10. We conclude that appropriate action has been taken to ensure the privacy of those registering on the national list. Specifically, the only consumer information telemarketers and sellers will receive from the national registry is the registrant's telephone number. This is the minimum amount of information that can be provided to implement the national registry. We note that the majority of telephone numbers are publicly available through telephone directories. To the extent that consumers have an unlisted number, the consumer will have to make a choice as to whether they prefer to register on a national do-not-call list or maintain complete anonymity. We reiterate, however, that the only information that will be provided to the telemarketer is the telephone number of the consumer. The ''seller'' and ''telemarketer'' may be the same entity or separate entities. Each entity on whose behalf the telephone call is being made must purchase access to the do-not-call database. No corresponding name or address information will be provided. We believe that this approach reduces the privacy concerns of such consumers to the greatest extent possible. As an additional safeguard, we find that restrictions should be imposed on the use of the national list. Consistent with the FTC's determination and 47 U.S.C. 227(c)(3)(K), we conclude that no person or entity may sell, rent, lease, purchase, or use the national do-not-call database for any purpose except compliance with section 227 and any such state or federal law to prevent telephone solicitations to telephone numbers on such list. *See* 47 U.S.C. 227(c)(3)(K). *See also* 16 CFR 310.4(b)(2). We conclude that these safeguards adequately protect the privacy rights of those consumers who choose to register on the national do-not-call list.

11. We conclude that the national database should allow for the registration of wireless telephone numbers, and that such action will better further the objectives of the TCPA and the Do-Not-Call Act. In so doing, we agree with the FTC and several commenters that wireless subscribers should not be excluded from the protections of the TCPA, particularly the option to register on a national do-not-call list. Congress has indicated its intent to provide significant protections under the TCPA to wireless users. 47 U.S.C. 227(b)(1)(iii). Allowing wireless subscribers to register on a national do-not-call list furthers the objectives of the TCPA, including protection for wireless subscribers from unwanted telephone solicitations for which they are charged.

12. Nextel Communications, Inc. (Nextel) argues, however, that, because the ''TCPA only authorizes the Commission to regulate solicitations to 'residential telephone subscribers,' '' wireless subscribers may not participate in the do-not-call list. Nextel Comments at 19. Nextel states we should define ''residential subscribers'' to mean ''telephone service used primarily for communications in the subscriber's residence.'' However, Nextel's application would result in ''[a]t most, the Commission [having the] authority to regulate solicitations to wireless subscribers in those circumstances where wireless service actually has displaced a residential land line, and functions as a consumer's primary residential telephone service.'' Nextel Comments at 21.

13. Nextel's definition of ''residential subscribers'' is far too restrictive and inconsistent with the intent of section 227. Specifically, there is nothing in section 227 to suggest that only a customer's ''primary residential telephone service'' was all that Congress sought to protect through the TCPA. In addition, had Congress intended to exclude wireless subscribers from the benefits of the TCPA, it knew how to address wireless services or consumers explicitly. For example, in section 227(b)(1), Congress specifically prohibited calls using automatic telephone dialing systems or artificial or prerecorded voice to telephone numbers assigned to ''paging service [or] cellular telephone service * * *.'' Moreover, under Nextel's definition, even consumers who use their wireless telephone service in their homes to supplement their residential wireline service, such as by using their wireless telephone service to make long distance phone calls to avoid wireline toll charges, would be excluded from the protections of the TCPA. Such an interpretation is at odds even with Nextel's own reasoning for its definition—that the TCPA's goal is ''to curb the 'pervasive' use of telemarketing 'to market goods and services to the home'.'' Nextel Comments at 20. It is well established that wireless subscribers often use their wireless phones in the same manner in which they use their residential wireline phones. Indeed, as even Nextel recognizes, there is a growing number of consumers who no longer maintain wireline phone service, and rely only on their wireless telephone service. Thus, we are not persuaded by Nextel's arguments.

14. Moreover, we believe it is more consistent with the overall intent of the TCPA to allow wireless subscribers to benefit from the full range of TCPA protections. Congress afforded wireless subscribers particular protections in the context of autodialers and prerecorded calls. 47 U.S.C. 227(b)(1)(A)(iii). In

addition, although Congress expressed concern with residential privacy, it also was concerned with the nuisance, expense and burden that telephone solicitations place on consumers. Therefore, we conclude that wireless subscribers may participate in the national do-not-call list. As a practical matter, since determining whether any particular wireless subscriber is a ''residential subscriber'' may be more fact-intensive than making the same determination for a wireline subscriber, we will presume wireless subscribers who ask to be put on the national do-not-call list to be ''residential subscribers.'' This presumption is only for the purposes of section 227 and is not in any way indicative of any attempt to classify or regulate wireless carriers for purposes of other parts of Title II. Such a presumption, however, may require a complaining wireless subscriber to provide further proof of the validity of that presumption should we need to take enforcement action.

15. We emphasize that it is not our intent in adopting a national do-not-call list to prohibit legitimate telemarketing practices. We believe that industry commenters present a false choice between the continued viability of the telemarketing industry and the adoption of a national do-not-call list. We are not persuaded that the adoption of a national do-not-call list will unduly interfere with the ability of telemarketers to contact consumers. Many consumers will undoubtedly take advantage of the opportunity to register on the national list. Several industry commenters suggest, however, that consumers derive substantial benefits from telephone solicitations. If so, many such consumers will choose not to register on the national do-not-call list and will opt instead to make do-not-call requests on a case-by-case basis or give express permission to be contacted by specific companies. In addition, we have provided for certain exemptions to the do-not-call registry in recognition of legitimate telemarketing business practices. For example, sellers of goods or services via telemarketing may continue to contact consumers on the national list with whom they have an established business relationship. We also note that calls that do not fall within the definition of ''telephone solicitation'' as defined in section 227(a)(3) will not be precluded by the national do-not-call list. These may include surveys, market research, political or religious speech calls.[1] The national do-not-call rules will also not prohibit calls to businesses and persons with whom the marketer has a personal relationship. Telemarketers may continue to contact all of these consumers despite the adoption of a national do-not-call list. Furthermore, we decline to adopt more restrictive do-not-call requirements on telemarketers as suggested by several commenters. For example, we decline to adopt an ''opt-in'' approach that would ban telemarketing to any consumer who has not expressly agreed to receive telephone solicitations. We believe that establishing such an approach would be overly restrictive on the telemarketing industry. We also decline to extend the national do-not-call requirements to tax-exempt nonprofit organizations or entities that telemarket on behalf of nonprofit organizations.

16. We agree with the FTC that a safe harbor should be established for telemarketers that have made a good faith effort to comply with the national do-not-call rules. A seller or telemarketer acting on behalf of the seller that has made a good faith effort to provide consumers with an opportunity to exercise their do-not-call rights should not be liable for violations that result from an error. Consistent with the FTC, we conclude that a seller or the entity telemarketing on behalf of the seller will not be liable for violating the national do-not-call rules if it can demonstrate that, as part of the seller's or telemarketer's routine business practice: (i) It has established and implemented written procedures to comply with the do-not-call rules; (ii) it has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the do-not-call rules; (iii) the seller, or telemarketer acting on behalf of the seller, has maintained and recorded a list of telephone numbers the seller may not contact; (iv) the seller or telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to the do-not-call rules employing a version of the do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process; and (v) any subsequent call otherwise violating the do-not-call rules is the result of error. We acknowledge that the three-month safe harbor period for telemarketers may prove to be too long to benefit some consumers. The national do-not-call list has the capability to process new registrants virtually instantaneously and telemarketers will have the capability to download the list at any time at no extra cost. The Commission intends to monitor carefully the impact of this requirement pursuant to its annual report to Congress and may consider a shorter time frame in the future.

17. As required by 47 U.S.C. 227(c)(1)(A), we have compared and evaluated the advantages and disadvantages of certain alternative methods to protect consumer privacy including the use of network technologies, special directory markings, and company-specific lists in adopting a national do-not-call database. The effectiveness of the company-specific approach has significantly eroded as a result of hang-up and ''dead air'' calls from predictive dialers. Consumers in these circumstances have no opportunity to assert their do-not-call rights. We believe that, as a stand-alone option, the company-specific approach no longer provides consumers with sufficient privacy protections. We also conclude that the availability of certain network technologies to reduce telephone solicitations is often ineffective and costly for consumers. Although technology has improved to assist consumers in blocking unwanted calls, it has also evolved in such a way as to assist telemarketers in making greater numbers of calls and even circumventing such blocking technologies. Millions of consumers continue to register on state do-not-call lists despite the availability of such technologies. Several commenters note that they continue to receive unwanted calls despite paying for technologies to reduce telephone solicitations. Several commenters also note that telemarketers routinely block transmission of caller ID. In particular, we are concerned that the cost of technologies such as caller ID, call blocking, and other such tools in an effort to reduce telemarketing calls fall entirely on the consumer. We believe that reliance on a solution that places the cost of reducing the number of unwanted solicitation calls entirely on the consumer is inconsistent with Congress' intent in the TCPA. For the reasons outlined in the 1992 TCPA Order, we also decline to adopt special area codes or prefixes for telemarketers. We believe this option is costly for

[1] Such calls may be prohibited if they serve as a pretext to an otherwise prohibited advertisement or a means of establishing a business relationship. Moreover, responding to such a ''survey'' does not constitute express permission or establish a business relationship exemption for purposes of a subsequent telephone solicitation. *See* H.R. Rep. No. 102–317 at 13 (''[T]he Committee does not intend the term ''telephone solicitation'' to include public opinion polling, consumer or market surveys, or other survey research conducted by telephone. A call encouraging purchase, rental, or investment would fall within the definition, however, even though the caller purports to be taking a poll or conducting a survey.'').

telemarketers that would be required to change their telephone numbers and administratively burdensome to implement. We also decline to adopt special directory markings of area white page directories because it would require telemarketers to purchase and review thousands of local telephone directories, at great cost to the telemarketers. We also note that telemarketers often compile solicitation lists from many sources other than local telephone directories. In addition, such directories do not include unlisted or unregistered telephone numbers and are often updated infrequently. We also note that the record in this proceeding provides little support for this option.

18. We now review the other requirements of 47 U.S.C. 227(c)(1). As required by section 227(c)(1)(B), we have evaluated AT&T Government Solutions, the entity selected by the FTC to administer the national database, and conclude that it has the capacity to establish and administer the national database. Congress has reviewed and approved funding for the implementation of that database. We believe that it is unnecessary to evaluate any other such entities at this time. We have considered whether different methods and procedures should apply for local telephone solicitations and small businesses as required by section 227(c)(1)(C). We conclude that the national do-not-call database takes into consideration the costs of those conducting telemarketing on a local or regional basis, including many small businesses. In particular, we note that the national do-not-call database will permit access to five or fewer area codes at no cost to the seller. Pursuant to section 227(c)(1)(D), we have considered whether there is a need for additional authority to further restrict telephone solicitations. We conclude that no such authority is required at this time. Pursuant to the Do-Not-Call Act, the Commission must report to Congress on an annual basis the effectiveness of the do-not-call registry. Should the Commission determine that additional authority is required over telephone solicitations as part of that analysis; the Commission will propose specific restrictions pursuant to that report. As required by section 227(c)(1)(E), we have developed regulations to implement the national do-not-call database in the most effective and efficient manner to protect consumer privacy needs while balancing legitimate telemarketing interests.

19. The FTC's decision to adopt a national do-not-call list is currently under review in federal district court. Because Congress has approved funding for the administration of the national list only for the FTC, this Commission would be forced to stay implementation of any national list should the plaintiffs prevail in one of those proceedings.

Exemptions

20. *Established Business Relationship.* We agree with the majority of industry commenters that an exemption to the national do-not-call list should be created for calls to consumers with whom the seller has an established business relationship. We note that 47 U.S.C. 227(a)(3) excludes from the definition of telephone solicitation calls made to any person with whom the caller has an established business relationship. We believe the ability of sellers to contact existing customers is an important aspect of their business plan and often provides consumers with valuable information regarding products or services that they may have purchased from the company. For example, magazines and newspapers may want to contact customers whose subscriptions have or soon will expire and offer new subscriptions. This conclusion is consistent with that of the FTC and the majority of states that have adopted do-not-call requirements and considered this issue. We revise the definition of an established business relationship so that it is limited in duration to eighteen (18) months from any purchase or transaction and three (3) months from any inquiry or application.

21. To the extent that some consumers oppose this exemption, we find that once a consumer has asked to be placed on the seller's company-specific do-not-call list, the seller may not call the consumer again regardless of whether the consumer continues to do business with the seller. We believe this determination constitutes a reasonable balance between the interests of consumers that may object to such calls with the interests of sellers in contacting their customers. This conclusion is also consistent with that of the FTC.

22. *Prior Express Permission.* In addition to the established business relationship exemption, we conclude that sellers may contact consumers registered on a national do-not-call list if they have obtained the prior express permission of those consumers. We note that section 227(a)(3) excludes from the definition of telephone solicitation calls to any person with ''that person's prior express invitation or permission.'' Consistent with the FTC's determination, we conclude that for purposes of the national do-not-call list such express permission must be evidenced only by a signed, written agreement between the consumer and the seller which states that the consumer agrees to be contacted by this seller, including the telephone number to which the calls may be placed. For purposes of this exemption, the term ''signed'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal or state contract law. Consumers registered on the national list may wish to have the option to be contacted by particular entities. Therefore, we conclude that sellers may obtain the express written agreement to call such consumers. The express agreement between the parties shall remain in effect as long as the consumer has not asked to be placed on the seller's company-specific do-not-call list. If the consumer subsequently requests not to be called, the seller must cease calling the consumer regardless of whether the consumer continues to do business with the seller. We also note that telemarketers may not call consumers on the national do-not-call list to request their written permission to be called unless they fall within some other exemption. We believe that to allow such calls would circumvent the purpose of this exemption. Prior express permission must be obtained by some other means such as direct mailing.

23. *Tax-Exempt Nonprofit Organizations.* We agree with those commenters that contend that the national do-not-call requirements should not be extended to tax-exempt nonprofit organizations or calls made by independent telemarketers on behalf of tax-exempt nonprofit organizations. We note that 47 U.S.C. 227(a)(3) specifically excludes calls made by tax-exempt nonprofit organizations from the definition of telephone solicitation. In so doing, we believe Congress clearly intended to exclude tax-exempt nonprofit organizations from prohibitions on telephone solicitations under the TCPA. The legislative history indicates that commercial calls constitute the bulk of all telemarketing calls. A number of commenters and the FTC agree with Congress' conclusion as it relates to a national do-not-call list. For this reason, we decline to extend the national do-not-call requirements to tax-exempt nonprofit organizations. A few commenters seek clarification that requests for blood donations will be exempt from the national do-not-call list. When such requests are made by tax-exempt nonprofit organizations, they will fall within the exemption for tax-exempt nonprofit organizations.

24. *Others.* We decline to create specific exemptions to the national do-

not-call requirements for entities such as newspapers, magazines, regional telemarketers, or small businesses. We find unpersuasive arguments that application of the national do-not-call database adopted herein will result in severe economic consequences for these entities. In particular, we note the exemptions adopted for calls made to consumers with whom the seller has an established business relationship and those that have provided express agreement to be called. As noted, many consumers may also determine not to register on the national database. Telemarketers may continue to contact all of these consumers. We believe these exemptions provide telemarketers with a reasonable opportunity to conduct their business while balancing consumer privacy interests. Although we agree that newspapers and other entities may often provide useful information and services to the public, given our conclusion that adoption of the national do-not-call list will not unduly interfere with the ability of telemarketers to reach consumers, we do not find this to be a compelling basis to exempt these entities.

25. We find that the national do-not-call rules do not apply to calls made to persons with whom the marketer has a personal relationship. As discussed herein, a ''personal relationship'' refers to an individual personally known to the telemarketer making the call. In such cases, we believe that calls to family members, friends and acquaintances of the caller will be both expected by the recipient and limited in number. In determining whether a telemarketer is considered a ''friend'' or ''acquaintance'' of a consumer, we will look at, among other things, whether a reasonable consumer would expect calls from such a person because they have a close or, at least, firsthand relationship. If a complaining consumer were to indicate that a relationship is not sufficiently personal for the consumer to have expected a call from the marketer, we would be much less likely to find that the personal relationship exemption is applicable. While we do not adopt a specific cap on the number of calls that a marketer may make under this exemption, we underscore that the limited nature of the exemption creates a strong presumption against those marketers who make more than a limited number of calls per day. Therefore, the two most common sources of consumer frustration associated with telephone solicitations—high volume and unexpected solicitations—are not likely present when such calls are limited to persons with whom the marketer has a personal relationship. Accordingly, we find that these calls do not represent the type of ''telephone solicitations to which [telephone subscribers] object'' discussed in 47 U.S.C. 227(c)(1). Moreover, we conclude that the Commission also has authority to recognize this limited carve-out pursuant to 47 U.S.C. 227(c)(1)(E). This subsection provides the Commission with discretion in implementing rules to protect consumer privacy to ''develop proposed regulations to implement the methods and procedures that the Commission determines are the most effective and efficient to accomplish the purpose of this section.'' 47 U.S.C. 227(c)(1)(E). To the extent that any consumer objects to such calls, the consumer may request to be placed on the telemarketer's company's company-specific do-not-call list. We intend to monitor these rules and caution that any individual or entity relying on personal relationships abusing this exemption may be subject to enforcement action.

26. In addition, we decline to extend this approach beyond persons that have a personal relationship with the marketer. For example, Vector urges the Commission to adopt an exemption that covers ''face-to-face'' appointment calls to anyone known personally to the ''referring source.'' We note that such relationships become increasingly tenuous as they extend to individuals not personally known to the marketer and thus such calls are more likely to be unexpected to the recipient and more voluminous. Accordingly, referrals to persons that do not have a personal relationship with the marketer will not fall within the category of calls discussed above.

27. We also decline to establish an exemption for calls made to set ''face-to-face'' appointments *per se.* We conclude that such calls are made for the purpose of encouraging the purchase of goods and services and therefore fall within the statutory definition of telephone solicitation. We find no reason to conclude that such calls are somehow less intrusive to consumers than other commercial telephone solicitations. The FTC has reviewed this issue and reached the same conclusion. In addition, we decline to exempt entities that make a ''*de minimis*'' number of commercial telemarketing calls. In contrast to Congress' rationale for exempting nonprofit organizations, we believe that such commercial calls continue to be unexpected to consumers even if made in low numbers. We do not believe the costs to access the national database is unreasonable for any small business or entity making a ''*de minimis*'' number of calls.

28. In response to the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Further Notice of Proposed Rulemaking, CG Docket No. 02–278, FCC 03–62 published at 68 FR 16250, April 3, 2003 (FNPRM) a few commenters contend that any new rules the Commission adopts would not apply to entities engaged in the business of insurance, because such rules would conflict with the McCarran-Ferguson Act. The McCarran-Ferguson Act provides that ''[t]he business of insurance * * * shall be subject to the laws of the * * * States which relate to the regulation * * * of such business.'' 15 U.S.C. 1012(a). The McCarran-Ferguson Act further provides that ''[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * * unless such Act specifically relates to the business of insurance.'' 15 U.S.C. 1012(b). American Council of Life Insurers (ACLI) explains that insurers' marketing activities are extensively regulated at the state level. The Commission's proposal, ACLI argues, ''intrudes upon the insurance regulatory framework established by the states'' and, therefore, should not be applicable to insurers under McCarran-Ferguson.

29. The McCarran-Ferguson Act does not operate to exempt insurance companies wholesale from liability under the TCPA. It applies only when their activities constitute the ''business of insurance,'' the state has enacted laws ''for the purpose of regulating'' the business of insurance, and the TCPA would ''impair, invalidate, or supersede'' such state laws. *See* 15 U.S.C. 1012(b). In the one case cited by commenters as addressing the interplay between McCarran-Ferguson and the TCPA, a federal district court dismissed a claim brought against two insurance companies under the TCPA for sending unsolicited facsimile advertisements. *The Chair King, Inc.* v. *Houston Cellular Corp.,* 1995 WL 1760037 (S.D. Tex. 1995), *vacated for lack of subject matter jurisdiction* 131 F.3d 507 (5th Cir. 1997). The *Chair King* court found that the TCPA conflicted with a Texas law that prohibited untrue, deceptive, or misleading advertising by insurers and their agents. In its analysis, the court determined that insurance advertising was part of the ''business of insurance,'' and that the Texas law in question was enacted for the purpose of regulating the business of insurance. The court then concluded that because the TCPA

''prohibits unsolicited insurance advertising by facsimile while the Texas [laws] permit [such] advertising * * * so long as the advertisements are truthful and not misleading,'' the TCPA conflicts with the Texas law and is preempted under McCarran-Ferguson. *See* 47 U.S.C. 227(b)(1)(C) and (a)(4).

30. To the extent that any state law regulates the ''business of insurance'' and the TCPA is found to ''invalidate, impair, or supersede'' such state law, it is possible that a particular activity involving the business of insurance would not fall within the reach of the TCPA. Any determination about the applicability of McCarran-Ferguson, however, requires an analysis of the particular activity and State law regulating it. In addition, McCarran-Ferguson applies only to federal statutes that ''invalidate, impair, or supersede'' state insurance regulation. Courts have held that duplication of state law prohibitions by a federal statute do not ''invalidate, impair, or supersede'' state laws regulating the business of insurance. Nor is the mere presence of a regulatory scheme enough to show that a state statute is ''invalidated, impaired or superseded.''

31. We believe that the TCPA, which was enacted to protect consumer privacy interests, is compatible with states' regulatory interests. In fact, the TCPA permits States to enforce the provisions of the TCPA on behalf of residents of their State. 47 U.S.C. 227(f)(1). In addition, we believe that uniform application of the national do-not-call registry to all entities that use the telephone to advertise best serves the goals of the TCPA. To exempt the insurance industry from liability under the TCPA would likely confuse consumers and interfere with the protections provided by Congress through the TCPA. Therefore, to the extent that the operation of McCarran-Ferguson on the TCPA is unclear, we will raise this issue in our Report to Congress as required by the Do-Not-Call Act.

32. We conclude that the national do-not-call mechanism established by the FTC and this Commission adequately takes into consideration the needs of small businesses and entities that telemarket on a local or regional basis in gaining access to the national database. As required by 47 U.S.C. 227(c)(1)(C), we have considered whether different procedures should apply for local solicitations and small businesses. We decline, however, to exempt such entities from the national do-not-call requirements. Given the large number of entities that solicit by telephone, and the technological tools that allow even small entities to make a significant number of solicitation calls, we believe that to do so would undermine the effectiveness of the national do-not-call rules in protecting consumer privacy and create consumer confusion and frustration. In so doing, we conclude that the approach adopted herein satisfies section 227(c)(4)'s requirement that the Commission, in developing procedures for gaining *access* to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level and develop a fee schedule for recouping the cost of such database that recognizes such differences. The national database will be available for purchase by sellers on an area-code-by-area-code basis. The cost to access the database will vary depending on the number of area codes requested. Sellers need only purchase those area codes in which the seller intends to telemarket. In fact, sellers that request access to five or fewer area codes will be granted access to those area codes at no cost. We note that thirty-three states currently have five or fewer area codes. Thus, telemarketers or sellers operating on a ''local'' or ''regional'' basis within one of these thirty-three states will have access to all of that state's national do-not-call registrants at no cost. In addition, the national database will provide a single number lookup feature whereby a small number of telephone numbers can be entered on a web page to determine whether any of those numbers are included on the national registry. We believe this fee structure adequately reflects the needs of regional telemarketers, small business and those marketing on a *de minimis* level. For these reasons, we conclude that this approach will not place any unreasonable costs on small businesses. 47 U.S.C. 227(c)(4)(B)(iii).

Section 227(c)(3) Requirements

33. We conclude that the national do-not-call database adopted jointly by this Commission and the FTC satisfies each of the statutory requirements outlined in 47 U.S.C. 227(c)(3)(A) through (c)(3)(L). We now discuss each such requirement. Section 227(c)(3)(A) requires the Commission to specify the method by which an entity to administer the national database will be selected. On August 2, 2002, the FTC issued a Request for Quotes (RFQ) to selected vendors on GSA schedules seeking proposals to develop, implement, and operate the national registry. After evaluating those proposals, the FTC selected a competitive range of vendors and issued an amended RFQ to those vendors on November 25, 2002. After further evaluation, the FTC selected AT&T Government Solutions as the successful vendor for the national do-not-call database on March 1, 2003. Congress has approved the necessary funding for implementation of the national database.

34. Pursuant to sections 227(c)(3)(B) through (c)(3)(C), we require each common carrier providing telephone exchange service to inform subscribers for telephone exchange service of the opportunity to provide notification that such subscriber objects to receiving telephone solicitations. Each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national database and (ii) the methods by which such rights may be exercised by the subscriber. Pursuant to section 227(c)(3)(C), we conclude that, beginning on January 1, 2004, such common carriers shall provide an annual notice, via an insert in the customer's bill, to inform their subscribers of the opportunity to register or revoke registrations on the national do-not-call database. Although we do not specify the exact description or form that such notification should take, such notification must be clear and conspicuous. At a minimum, it must include the toll-free telephone number and Internet address established by the FTC to register or revoke registrations on the national do-not-call database.

35. Section 227(c)(3)(D) requires the Commission to specify the methods by which registrations shall be collected and added to the database. Consumers will be able to add their telephone numbers to the national do-not-call registry either through a toll-free telephone call or over the Internet. Consumers who choose to register by phone will have to call the registration number from the telephone line that they wish to register. Their calls will be answered by an Interactive Voice Response (IVR) system. The consumers will be asked to enter on their telephone keypad the telephone number from which the consumer is calling. This number will be checked against the ANI that is transmitted with the call. If the number entered matches the ANI, then the consumer will be informed that the number has been registered. Consumers who choose to register over the Internet will go to a Web site dedicated to the registration process where they will be asked to enter the telephone number they wish to register. We encourage the FTC to notify consumers in the IVR message that the national registry will

prevent most, but not all, telemarketing calls. Specifically, we believe consumers should be informed that the do-not-call registry does not apply to tax-exempt nonprofit organizations and companies with whom consumers have an established business relationship. The effectiveness and value of the national registry depends largely on an informed public. Therefore, we also intend to emphasize in our educational materials and on our Web site the purpose and scope of the new rules.

36. Section 227(c)(3)(E) prohibits any residential subscriber from being charged for giving or revoking notification to be included on the national do-not-call database. Consumers may register or revoke do-not-call requests either by a toll-free telephone call or over the Internet. No charge will be imposed on the consumer. Section 227(c)(3)(F) prohibits any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included on the national database. Subject to the exemptions, we adopt rules herein that will prohibit telephone solicitations to those consumers that have registered on the national database. *See also* 16 CFR 310.4(b)(1)(iii)(B).

37. Section 227(c)(3)(G) requires the Commission to specify (i) the methods by which any person deciding to make telephone solicitations will obtain access to the database, by area code or local exchange prefix, and (ii) the costs to be recovered from such persons. Section 227(c)(3)(H) requires the Commission to specify the methods for recovering, from the persons accessing the database, the costs involved in the operations of the database. To comply with the national do-not-call rules, telemarketers must gain access to the telephone numbers in the national database. Telemarketers will have access to the national database by means of a fully-automated, secure Web site dedicated to providing information to these entities. The first time a telemarketer accesses the system, the company will be asked to provide certain limited identifying information, such as name and address, contact person, and contact person's telephone number and address. If a telemarketer is accessing the registry on behalf of a client seller, the telemarketer will also need to identify that client. When a telemarketer first submits an application to access registry information, the company will be asked to specify the area codes they want to access. An annual fee will be assessed based upon the number of area codes requested. The FTC has proposed that sellers be charged $29 per area code with a maximum annual fee of $7,250 for access to the entire national database. Sellers may request access to five or less area codes for free. Each entity on whose behalf the telephone solicitation is being made must pay this fee via credit card or electronic funds transfer. After payment is processed, the telemarketer will be given an account number and permitted to access the appropriate portions of the registry. Telemarketers will be permitted to access the registry as often as they wish for no additional cost, once the annual fee is paid.

38. Section 227(c)(3)(I) requires the Commission to specify the frequency with which the national database will be updated and specify the method by which such updates will take effect for purposes of compliance with the do-not-call regulations. Because the registration process will be completely automated, updates will occur continuously. Consumer registrations will be added to the registry at the same time they register—or at least within a few hours after they register. The safe harbor provision requires telemarketers to employ a version of the registry obtained not more than three months before any call is made. Thus, telemarketers will be required to update their lists at least quarterly. Instead of making the list available on specific dates, the registry will be available for downloading on a constant basis so that telemarketers can access the registry at any time. As a result, each telemarketer's three-month period may begin on different dates. Appropriate state and federal regulators will be capable of verifying when the telemarketer last accessed the list. In addition, the administrator will check all telephone numbers in the do-not-call registry each month against national databases, and those numbers that have been disconnected or reassigned will be removed from the registry. We encourage parties that may have specific recommendations on ways to improve the overall accuracy of the database in removing disconnected and reassigned telephone numbers to submit such proposals to our attention and to the FTC directly.

39. Section 227(c)(3)(J) requires that the Commission's regulations be designed to enable states to use the database for purposes of administering or enforcing state law. In fact, 47 U.S.C. 227(e)(2) prohibits states from using any database that does not include the part of the national database that relates to such state. Section 227(c)(3)(K) prohibits the use of the database for any purpose other than compliance with the do-not-call rules and any such state law and requires the Commission to specify methods for protection of the privacy rights of persons whose numbers are included in such database. Consistent with the determination of the FTC, we conclude that any law enforcement agency that has responsibility to enforce federal or state do-not-call rules or regulations will be permitted to access the appropriate information in the national registry. This information will be obtained through a secure Internet Web site. Such law enforcement access to data in the national registry is critical to enable state Attorneys General, public utility commissions or an official or agency designated by a state, and other appropriate law enforcement officials to gather evidence to support enforcement of the do-not-call rules under the state and federal law. In addition, we have imposed restrictions on the use of the national list. Consistent with the FTC's determination, we have concluded that no person or entity may sell, rent, lease, purchase, or use the national do-not-call database for any purpose except compliance with section 227 and any such state or federal law to prevent telephone solicitations to telephone numbers on such list. We specifically prohibit any entity from purchasing this list from any entity other than the national do-not-call administrator or dispensing the list to any entity that has not paid the required fee to the administrator. The only information that will be made available to telemarketers is the telephone number of consumers registered on the list. Given the restrictions imposed on the use of the national database and the limited amount of information provided, we believe that adequate privacy protections have been established for consumers.

40. Section 227(c)(3)(L) requires each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of the national do-not-call rules and the regulations thereunder. We therefore require common carriers, beginning January 1, 2004, to make a one-time notification to any person or entity making telephone solicitations that is served by that carrier of the national do-not-call requirements. We do not specify the exact description or form that such notification should take. At a minimum, it must include a citation to the relevant federal do-not-call rules as set forth in 47 CFR 64.1200 and 16 CFR part 310, respectively. Although we recognize that carriers may not be capable of identifying every person or entity engaged in telephone solicitations

served by that carrier, we require carriers to make reasonable efforts to comply with this requirement. We note that failure to give such notice by the common carrier to a telemarketer served by that carrier will not excuse the telemarketer from violations of the Commission's rules.

Constitutionality

41. We conclude that a national do-not-call registry is consistent with the First Amendment. We believe, like the FTC, that our regulations satisfy the criteria set forth in *Central Hudson Gas & Elec.* v. *Pub. Serv. Comm. of N.Y.,* in which the Supreme Court established the applicable analytical framework for determining the constitutionality of a regulation of commercial speech. *Central Hudson Gas & Elec.* v. *Pub. Serv. Comm. of N.Y.,* 447 U.S. 557 (1980). *See Kathryn Moser* v. *Federal Communications Commission,* 46 F.3d 970 (9th Cir. 1995) (*Moser*) *cert. denied,* 515 U.S. 1161 (1995) (upholding ban on prerecorded telephone calls); *State of Missouri* v. *American Blast Fax,* 323 F.3d 649 (8th Cir. 2003) (*American Blast Fax*), *pet. for rehearing pending* (upholding ban on unsolicited fax advertising) and *Destination Ventures* v. *Federal Communications Commission,* 46 F.3d 54 (9th Cir.1995) (*Destination Ventures*) (upholding ban on unsolicited fax advertising). Our conclusion is also consistent with every Court of Appeals decision that has considered First Amendment challenges to the TCPA.

42. Under the framework established in *Central Hudson,* a regulation of commercial speech will be found compatible with the First Amendment if (1) there is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulations are not more extensive than necessary to serve that interest. *Central Hudson,* 447 U.S. at 566. Specifically, the Court found that ''[f]or commercial speech to come within the First Amendment, it at least must concern lawful activity and not be misleading. Next, it must be determined whether the asserted governmental interest to be served by the restriction on commercial speech is substantial. If both inquiries yield positive answers, it must then be decided whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.'' *Id.* at 557. Under the first prong, we find that there is a substantial governmental interest in protecting residential privacy. The Supreme Court has ''repeatedly held that individuals are not required to welcome unwanted speech into their homes and that the government may protect this freedom.'' *Frisby* v. *Schultz,* 487 U.S. 474, 485. *See also Federal Communications Commission* v. *Pacifica Foundation, 438 U.S. 726, 748 (1978) (*''[I]n the privacy of the home, * * * the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder.'').

43. In particular, the government has an interest in upholding the right of residents to bar unwanted speech from their homes. In *Rowan* v. *United States Post Office,* the Supreme Court upheld a statute that permitted a person to require that a mailer remove his name from its mailing lists and stop all future mailings to the resident:

> The Court has traditionally respected the right of a householder to bar, by order or notice, solicitors, hawkers, and peddlers from his property. In this case the mailer's right to communicate is circumscribed only by an affirmative act of the addressee giving notice that he wishes no further mailings from that mailer. * * * In effect, Congress has erected a wall—or more accurately permits a citizen to erect a wall—that no advertiser may penetrate without his acquiescence.

Rowan v. *United States Post Office,* 397 U.S. 728 at 737–738 (1970).

44. Here, the record supports that the government has a substantial interest in regulating telemarketing calls. In 1991, Congress held numerous hearings on telemarketing, finding, among other things, that ''[m]ore than 300,000 solicitors call more than 18,000,000 Americans every day'' and ''[u]nrestricted telemarketing can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.'' Our record, like the FTC's, demonstrates that telemarketing calls are even more of an invasion of privacy than they were in 1991. The number of daily calls has increased five fold (to an estimated 104 million), due in part to the use of new technologies, such as predictive dialers. An overwhelming number of consumers in the approximately 6,500 commenters in this proceeding support the adoption and implementation of a national do-not-call registry. In addition to citing concerns about the numerous and ever-increasing number of calls, they complain about the inadequacies of the company-specific approach, the burdens of such calls on the elderly and people with disabilities, and the costs of acquiring technologies to reduce the number of unwanted calls. Accordingly, we believe that the record demonstrates that telemarketing calls are a substantial invasion of residential privacy, and regulations that address this problem serve a substantial government interest.

45. Under *Central Hudson's* second prong, we find that the Commission's regulations directly advance the substantial government interest. Under this prong, the government must demonstrate that ''the harms it recites are real and that its restriction will in fact alleviate them to a material degree.'' *Florida Bar* v. *Went For It, Inc.,* 515 U.S. 618, 626 (1995) (citations omitted). It may justify the restrictions on speech ''based solely on history, consensus, and ''simple common sense.'' *Id.* at 628 (citation omitted). Creating and implementing a national do-not-call registry will directly advance the government's interest in protecting residential privacy from unwanted telephone solicitations. Congress, consumers, state governments and the FTC have reached the same conclusion. The history of state administered do-not-call lists demonstrates that such do-not-call programs have a positive impact on the ability of many consumers to protect their privacy by reducing the number of unwanted telephone solicitations that they receive each day. Congress has reviewed the FTC's decision to establish a national do-not-call list and concluded that the do-not-call initiative will provide significant benefits to consumers throughout the United States. We reject the arguments that because our do-not-call registry provisions do not apply to tax-exempt nonprofit organizations, our regulations do not directly and materially advance the government interest of protecting residential privacy. ''Government [need not] make progress on every front before it can make progress on any front.'' *United States* v. *Edge Broadcasting Company,* 509 U.S. 418, 434 (1993). *See also Moser* v. *FCC,* 46 F.3d at 975 (''Congress may reduce the volume of telemarketing calls without completely eliminating the calls.'').

46. We believe that the facts here are easily distinguishable from those in *Rubin* v. *Coors Brewing Company,* 514 U.S. 476 (1995) and *City of Cincinnati* v. *Discovery Network,* 507 U.S. 410 (1993). In *Coors,* the Court struck down a prohibition against disclosure of alcoholic content on labels or in advertising that applied to beer but not to wine or distilled spirits, finding that ''the irrationality of this unique and puzzling regulatory framework ensures that the labeling ban will fail to achieve [the Government's interest in combating strength wars.]'' In *Discovery Network,* the Court struck down an ordinance which banned 62 newsracks containing commercial publications but did not ban 1,500–2,000 newsracks containing

newspapers, finding that ''the distinction bears no relationship *whatsoever* to the particular [aesthetic] interests that the city has asserted.'' Here, Congress' decision to exclude tax-exempt nonprofit organizations from the definition of telemarketing in the TCPA was both rational and related to its interest in protecting residential privacy. The House Report finds that ''the record suggests that most unwanted telephone solicitations are commercial in nature. * * *[T]he Committee also reached the conclusion, based on the evidence, that '' calls [from tax-exempt nonprofit organizations] are less intrusive to consumers because they are more expected. Consequently, the two main sources of consumer problems '' high volume of solicitations and unexpected solicitations—are not present in solicitations by nonprofit organizations.'' H.R. Rep. No. 102–317, at 16 (1991).

47. Commenters in our record also express the concern that subjecting tax-exempt nonprofit organizations to the national do-not-call requirements may sweep too broadly because it would prompt some consumers to accept blocking of non-commercial, charitable calls to which they might not otherwise object as an undesired effect of registering on the national database to stop unwanted commercial solicitation calls. Both the Eighth and the Ninth Circuits in *American Blast Fax* and *Destination Ventures* found that the provisions of the TCPA, which bans unsolicited commercial faxes but not non-commercial faxes, directly advance a substantial government interest, and we believe that the same distinction may be applied to the national do-not-call registry.

48. We find under the third prong of the *Central Hudson* test that our proposed regulations are not more extensive than necessary to protect residential privacy. The Supreme Court has made clear that with respect to this prong, ''the differences between commercial speech and noncommercial speech are manifest.'' *Florida Bar,* 515 U.S. 618, 632. The Court held that:

> [T]he least restrictive means test has no role in the commercial speech context. What our decisions require, instead, is a fit between the legislature's ends and the means chosen to accomplish those ends, a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served * * * [T]he existence of numerous and obvious less-burdensome alternatives to the restriction on commercial speech is certainly a relevant consideration in determining whether the fit between the ends and means is reasonable.

In *Florida Bar,* the Supreme Court found that a prohibition against lawyers using direct mail to solicit personal injury or wrongful death clients within 30 days of an accident was not more extensive than necessary to ''protect * * * the privacy and tranquility of personal injury victims and their loved ones against intrusive, unsolicited contact by lawyers.'' *Id.* at 624. Similarly, the Ninth Circuit has found that the TCPA's ban on prerecorded telemarketing calls constitutes a ''reasonable fit'' with the government's legitimate interest in protecting residential privacy. *Moser,* 46 F.3d at 975.

49. Here, we find that our regulations meet the requirements of *Central Hudson's* third prong. Pursuant to our regulations, we adopt a single, national do-not-call database that we will enforce jointly with the FTC. Our rules mandate that common carriers providing telephone exchange service shall inform their subscribers of their right to register on the database either through a toll-free telephone call or over the Internet. Furthermore, telemarketers and sellers must gain access to telephone numbers in the national database and will be able to do so by means of a fully automated, secure Web site dedicated to providing information to these entities. In addition, sellers will be assessed an annual fee based upon the number of area codes they want to assess, with the maximum annual fee capped at $7,250. Our rules also provide that the national database will be updated continuously, and telemarketers must update their lists quarterly. We find that our regulations are a reasonable fit between the ends and means and are not as restrictive as the bans upheld in the cases cited. In *Florida Bar,* the Supreme Court upheld an *absolute* ban against lawyers using direct mail to solicit personal injury or wrongful death clients within 30 days of an accident. Similarly, the Ninth Circuit has upheld the TCPA's *absolute* ban on prerecorded telemarketing calls, and both the Eighth and Ninth Circuit have upheld the TCPA's *absolute* ban on unsolicited faxes. Here, our regulations do not absolutely ban telemarketing calls. Rather, they provide a mechanism by which individual consumers may choose not to receive telemarketing calls. We also note that there are many other ways available to market products to consumers, such as newspapers, television, radio advertising and direct mail. *See Florida Bar,* 515 U.S. at 633–34. In addition, there simply are not ''numerous and obvious less-burdensome alternatives'' to the national do-not-call registry. The record clearly demonstrates widespread consumer dissatisfaction both with the effectiveness of the current company-specific rules that are currently in place and the effectiveness and expense of certain technological alternatives to reduce telephone solicitations. We also note that many of the ''burdens'' of the national do-not-call registry—issues concerning its costs, accuracy, and privacy—have been addressed by advances in computer technology and software over the last ten years. Thus, we find that our regulations implementing the national do-not-call registry are consistent with the First Amendment and the framework established in *Central Hudson.*

50. Furthermore, we reject the arguments that the *Central Hudson* framework is not appropriate and that strict scrutiny is required because the regulations implementing the national do-not-call list are content-based, due to the TCPA's exemptions for non-profit organizations and established business relationships. For support, commenters cite to *Discovery Network,* 507 U.S. 410, in which the Court struck down Cincinnati's ordinance which banned newsracks containing commercial publications but did not ban newsracks containing newspapers. The Court found that the regulation could neither be justified as a restriction on commercial speech under *Central Hudson,* nor could it be upheld as a valid time, place, or manner restriction on protected speech. *City of Cincinnati* v. *Discovery Network Inc. et al.,* 507 U.S. 410 at 430 (1993). The Court explained that ''the government may impose reasonable restrictions on the time, place or manner of engaging in protected speech provided that they are adequately justified ''without reference to the content of the regulated speech'.'' *Id.* at 428 (citation omitted). In this case, the Court held that the City's ban which covered commercial publications but not newspapers was content-based. *Id.* at 429. ''It is the absence of a neutral justification for its selective ban on newsracks that prevents the city from defending its newsrack policy as content neutral.'' *Id.* at 429–30.

51. Here, however, there was a neutral justification for Congress' decision to exclude non-profit organizations. Congress found that ''the two sources of consumer problems—high volume of solicitations and unexpected solicitations—are not present in solicitations by nonprofit organizations.'' H.R. Rep. No. 102–317, at 16 (1991). Congress also made a similar finding with respect to solicitations based on established

business relationships. *Id.* at 14. Consumers are more likely to anticipate contacts from companies with whom they have an existing relationship and the volume of such calls will most likely be lower. Furthermore, as the Eighth Circuit noted when it distinguished the *Discovery Network* case in upholding the TCPA's ban on unsolicited faxes that applies to commercial speech but not to noncommercial speech, ''the government may regulate one aspect of a problem without regulating all others.'' *Missouri ex rel.* v. *American Blast Fax,* 323 F.3d at 656 n.4 (*citing United States* v. *Edge Broad. Co.,* 509 U.S. 418 at 434). Thus, we believe it is clear that our do-not-call registry regulations may apply to commercial solicitations without applying to tax-exempt nonprofit solicitations, and that such regulations are not subject to a higher level of scrutiny. Indeed, we agree with the FTC that regulation of non-profit solicitations are subject to a higher level of scrutiny than solicitations of commercial speech *FTC Order,* 68 FR at 4636, n. 675, *quoting from Metromedia* v. *San Diego,* 453 U.S. 490, 513 (1981) and *citing Watchtower Bible and Tract Soc'y* v. *Village of Stratton,* 122 S.Ct. 2080, and ''greater care must be given [both] to ensuring that the governmental interest is actually advanced by the regulatory remedy, and [to] tailoring the regulation narrowly so as to minimize its impact on First Amendment rights.'' *FTC Order,* 68 FR at 4636.

Consistency With State and FTC Do-Not-Call Rules

52. We conclude that harmonization of the various state and federal do-not-call programs to the greatest extent possible will reduce the potential for consumer confusion and regulatory burdens on the telemarketing industry. An underlying concern expressed by many commenters in this proceeding is the potential for duplication of effort and/or inconsistency in the rules relating to the state and federal do-not-call programs. Congress has indicated a similar concern in requiring the Commission to ''maximize consistency'' with the FTC's rules. We find that the use of a single national database of do-not-call registrants will ultimately prove the most efficient and economical means for consumer registrations and access for compliance purposes by telemarketing entities and regulators.

53. The states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules. In fact, the TCPA specifically outlines a role for the states in this process. See 47 U.S.C. 227(e) and (f). In an effort to reconcile the state and federal roles, we have conducted several meetings with the states and FTC. We expect such coordination to be ongoing in an effort to promote the continued effectiveness of the national do-not-call program. We clarify the respective governmental roles in this process under the TCPA. We intend to develop a Memorandum of Understanding with the FTC in the near future outlining the respective federal responsibilities under the national do-not-call rules. We note that a few commenters have expressed concern that the FTC and this Commission may adopt separate national do-not-call lists. We reiterate here that there will be only one national database.

54. *Use of a Single Database.* We conclude that the use of a single national do-not-call database, administered by the vendor selected by the FTC, will ultimately prove the most efficient and economical means for consumer registrations and access by telemarketers and regulators. The establishment of a single database of registrants will allow consumers to register their requests not to be called in a single transaction with one governmental agency. In addition, telemarketers may access consumer registrations for purposes of compliance with the do-not-call rules through one visit to a national database. This will substantially alleviate the potential for consumer confusion and administrative burden on telemarketers that would exist if required to access multiple databases. In addition, we note that section 227(e)(2) prohibits states, in regulating telephone solicitations, from using any database, list, or list system that does not include the part of such single national database that relates to that state. Thus, pursuant to this requirement, any individual state do-not-call database must include all of the registrants on the national database for that state. We determine that the administrator of the national database shall make the numbers in the database available to the states as required by the TCPA.

55. We believe the most efficient way to create a single national database will be to download the existing state registrations into the national database. The FTC has indicated that the national database is designed to allow the states to download into the national registry—at no cost—the telephone numbers of consumers that have registered with their state do-not-call lists. We believe that consumers, telemarketers, and regulators will benefit from the efficiencies derived from the creation of a single do-not-call database. We encourage states to work diligently toward this goal. We recognize that a reasonable transition period may be required to incorporate the state registrations in a few states into the national database. We therefore adopt an 18-month transition period for states to download their state lists into the national database. Having an 18-month transition period will allow states that do not have full-time legislatures to complete a legislative cycle and create laws that would authorize the use of a national list. In addition, this transition period is consistent with the amount of time that the FTC anticipates it would take to incorporate the states' lists into the national database. Although we do not preempt or require states to discontinue the use of their own databases at this time, once the national do-not-call registry goes into effect, states may not, in their ''regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of [the national do-not-call registry] that relates to [each] State.'' See 47 U.S.C. 227(e)(2). We believe that there are significant advantages and efficiencies to be derived from the creation and use of a single database for all parties, including states, and we strongly encourage states to assist in this effort. The Commission intends to work diligently with the states and FTC in an effort to establish a single do-not-call database.

56. *Interplay of State and Federal Do-Not-Call Regulations.* In the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Notice of Proposed Rulemaking and Memorandum Opinion and Order, 17 FCC Rcd 17459, CG Docket No. 02–278 and CC Docket No. 92–90 (2002) (2002 Notice), we generally raised the issue of the interplay of state and federal do-not-call statutes and regulations. In response, several parties argued that state regulations must or should be preempted in whole, or at least in part, and several other parties argued that the Commission cannot or should not preempt. For example, several industry commenters contend that the TCPA provides the Commission with the authority to preempt state do-not-call regulations. These commenters contend that Congress intended the TCPA to occupy the field or, at the very least, intended to preempt state regulation of interstate telemarketing. Many state and consumer commenters note, however, that the TCPA contemplates a role for the states in regulating telemarketing

and specifically prohibits preemption of state law in certain instances. States and consumers note that state do-not-call regulations have been a successful initiative in protecting consumer privacy rights. In addition, several commenters note the importance of federal and state cooperation in enforcing the national do-not-call regulations. The record also indicates that states have historically enforced their own state statutes within, as well as across state lines. The statute also contains a savings clause for state proceedings to enforce civil or criminal statutes, and at least one federal court has found that the TCPA does not preempt state regulation of autodialers that are not in actual conflict with the TCPA. Van *Bergen* v. *Minnesota,* 59 F.3d 1541, 1547–48 (8th Cir. 1995).

57. The main area of difference between the state and federal do-not-call programs relates to the exemptions created from the respective do-not-call regulations. Some state regulations are less restrictive by adopting exemptions that are not recognized under federal law. For example, some states have adopted exemptions for insurance agents, newspapers, or small businesses. In addition, a few states have enacted laws that are more restrictive than the federal regulations by not recognizing federal exemptions such as the established business relationship. Most states, however, exempt nonprofit organizations and companies with whom the consumer has an established business relationship in some manner consistent with federal regulations.

58. At the outset, we note that many states have not adopted any do-not-call rules. The national do-not-call rules will govern exclusively in these states for both intrastate and interstate telephone solicitations. Pursuant to 47 U.S.C. 227(f)(1), all states have the ability to enforce violations of the TCPA, including do-not-call violations, in federal district court. Thus, we conclude that there is no basis for conflict regarding the application of do-not-call rules in those states that have not adopted do-not-call regulations.

59. For those states that have adopted do-not-call regulations, we make the following determinations. First, we conclude that, by operation of general conflict preemption law, the federal rules constitute a floor, and therefore would supersede all less restrictive state do-not-call rules. We believe that any such rules would frustrate Congress' purposes and objectives in promulgating the TCPA. Specifically, application of less restrictive state exemptions directly conflicts with the federal objectives in protecting consumer privacy rights under the TCPA. Thus, telemarketers must comply with the federal do-not-call rules even if the state in which they are telemarketing has adopted an otherwise applicable exemption. Because the TCPA applies to both intrastate and interstate communications, the minimum requirements for compliance are therefore uniform throughout the nation. We believe this resolves any potential confusion for industry and consumers regarding the application of less restrictive state do-not-call rules.

60. Second, pursuant to 47 U.S.C. 227(e)(1), we recognize that states may adopt more restrictive do-not-call laws governing intrastate telemarketing. With limited exceptions, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements or regulations. Section 227(e)(1) further limits the Commission's ability to preempt any state law that prohibits certain telemarketing activities, including the making of telephone solicitations. This provision is ambiguous, however, as to whether this prohibition applies both to intrastate and interstate calls, and is silent on the issue of whether state law that imposes more restrictive regulations on interstate telemarketing calls may be preempted. We caution that more restrictive state efforts to regulate interstate calling would almost certainly conflict with our rules.

61. We recognize that states traditionally have had jurisdiction over only intrastate calls, while the Commission has had jurisdiction over interstate calls. Here, Congress enacted section 227 and amended section 2(b) to give the Commission jurisdiction over both interstate and intrastate telemarketing calls. Congress did so based upon the concern that states lack jurisdiction over interstate calls. Although section 227(e) gives states authority to impose more restrictive intrastate regulations, we believe that it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to multiple, conflicting regulations. We conclude that inconsistent interstate rules frustrate the federal objective of creating uniform national rules, to avoid burdensome compliance costs for telemarketers and potential consumer confusion. The record in this proceeding supports the finding that application of inconsistent rules for those that telemarket on a nationwide or multi-state basis creates a substantial compliance burden for those entities.

62. We therefore believe that any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted. We will consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 or our rules may seek a declaratory ruling from the Commission. We reiterate the interest in uniformity—as recognized by Congress—and encourage states to avoid subjecting telemarketers to inconsistent rules.

63. National Association of Attorneys General (NAAG) contends that states have historically enforced telemarketing laws, including do-not-call rules, within, as well as across, state lines pursuant to ''long-arm'' statutes. According to NAAG, these state actions have been met with no successful challenges from telemarketers. We note that such ''long-arm'' statutes may be protected under section 227(f)(6) which provides that ''nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such state.'' 47 U.S.C. 227(f)(6). Nothing that we do in this order prohibits states from enforcing state regulations that are consistent with the TCPA and the rules established under this order in state court.

Company Specific Do-Not-Call Lists

Efficacy of the Company-Specific Rules

64. We conclude that retention of the company-specific do-not-call rules will complement the national do-not-call registry by providing consumers with an additional option for managing telemarketing calls. We believe that providing consumers with the ability to tailor their requests not to be called, either on a case-by-case basis under the company do-not-call approach or more broadly under the national registry, will best balance individual privacy rights and legitimate telemarketing practices. As a result, those consumers that wish to prohibit telephone solicitations from only certain marketers will continue to have the option to do so. In addition, consumers registered on the national do-not-call registry will have the opportunity to request that they not be called by entities that would otherwise fall within the established business relationship exemption by using the option to be placed on the company-

specific lists. This finding is consistent with that of the FTC.

65. We agree with those commenters that contend that the company-specific do-not-call approach has not proven ideal as a stand-alone method to protect consumer privacy. In particular, the increase in telemarketing calls over the last decade now places an extraordinary burden on consumers that do not wish to receive telephone solicitations. These consumers must respond on a case-by-case basis to request that they not be called. The record in this proceeding is replete with examples of consumers that receive numerous unwanted telemarketing calls each day. In addition, the widespread use of predictive dialers now results in many ''dead air'' or hang-up calls in which consumers do not even have the opportunity to make a do-not-call request. Such calls are particularly burdensome for the elderly and disabled consumers. We believe, however, that the measures adopted in this order will enhance the effectiveness of the company-specific list. For example, the adoption of a national do-not-call registry alleviates the concerns of those consumers, including elderly and disabled consumers that may find a case-by-case do-not-call option particularly burdensome. In addition, restrictions on abandoned calls will reduce the number of ''dead air'' calls. Caller ID requirements will improve the ability of consumers to identify and enforce do-not-call rights against telemarketers. We also note that although many commenters question the effectiveness of the company-specific approach, there is little support in the record to eliminate those rules based on the adoption of the national do-not-call list. We retain the option for consumers to request on a case-by-case basis whether they desire to receive telephone solicitations.

Amendments to the Company-Specific Rules

66. We agree with several industry commenters that the retention period for records of those consumers requesting not to be called should be reduced from the current ten-year requirement to five years. As many commenters note, telephone numbers change hands over time and a shorter retention period will help ensure that only those consumers who have requested not to be called are retained on the list. Both telemarketers and consumers will benefit from a list that more accurately reflects those consumers who have requested not to be called. The FTC has concluded and several commenters in this proceeding agree that five years is a more reasonable period to retain consumer do-not-call requests. We believe a five-year retention period reasonably balances any administrative burden imposed on consumers in requesting not to be called with the interests of telemarketers in contacting consumers. As noted, a shorter retention period increases the accuracy of the database while the national do-not-call option mitigates the burden on those consumers who may believe more frequent company-specific do-not-call requests are overly burdensome. We believe any shorter retention period, as suggested by a few industry commenters, would unduly increase the burdens on consumers who would be forced to make more frequent renewals of their company-specific do-not-call requests without substantially improving the accuracy of the database. We therefore amend our rules to require that a do-not-call request be honored for five years from the time the request is made.

67. We decline at this time to require telemarketers to make available a toll-free number or Web site that would allow consumers to register company-specific do-not-call requests or verify that such a request was made with the marketer. We also decline to require telemarketers to provide a means of confirmation so that consumers may verify their requests have been processed at a later date. Telemarketers should, however, confirm that any such request will be recorded at the time the request is made by the consumer. In addition, consumers calling to register do-not-call requests in response to prerecorded messages should be processed in a timely manner without being placed on hold for unreasonable periods of time. Although we believe the additional measures discussed above would improve the ability of consumers, including consumers with disabilities, to register do-not-call requests, we agree with those commenters that contend that such requirements would be unduly costly to businesses. In particular, we are concerned with the costs imposed on small businesses. The Commission will, however, continue to monitor compliance with our company-specific do-not-call rules and take further action as necessary.

68. We conclude that telemarketers must honor a company-specific do-not-call request within a reasonable time of such request. We disagree, however, with commenters that suggest that periods of up to 90 days are a reasonable time required to process do-not-call requests. Although some administrative time may be necessary to process such requests, this process is now largely automated. As a result, such requests can often be honored within a few days or weeks. Taking into consideration both the large databases of such requests maintained by some entities and the limitations on certain small businesses, we conclude that a reasonable time to honor such requests must not exceed thirty days from the date such a request is made. Consistent with our existing rules, such request applies to all telemarketing campaigns of the seller and any affiliated entities that the consumer reasonably would expect to be included given the identification of the caller and the product being advertised. 47 CFR 64.1200(e)(2)(v). We note that the Commission's rules require that entities must record company-specific do-not-call requests and place the subscriber's telephone number on the do-not-call list at the time the request is made. 47 CFR 64.1200(e)(2)(iii). Therefore, telemarketers with the capability to honor such company-specific do-not-call requests in less than thirty days must do so. We believe this determination adequately balances the privacy interests of those consumers that have requested not to be called with the interests of the telemarketing industry. Consumers expect their requests not to be called to be honored in a timely manner, and thirty days should be the maximum administrative time necessary for telemarketers to process that request.

69. In addition, we decline to extend the company-specific do-not-call rules to entities that solicit contributions on behalf of tax-exempt nonprofit organizations. The TCPA excludes calls or messages by tax-exempt nonprofit organizations from the definition of telephone solicitation. *See* 47 U.S.C. 227(a)(3)(C). The Commission has clarified that telemarketers who solicit on behalf of tax-exempt nonprofit organizations are not subject to the rules governing telephone solicitations. In the 2002 Notice, the Commission declined to seek further comment on this issue. We acknowledge that this determination creates an inconsistency with the FTC's conclusion to extend its company-specific requirements to entities that solicit contributions on behalf of tax-exempt nonprofit organizations. The Commission, however, derives its authority to regulate telemarketing from the TCPA, which excludes tax-exempt nonprofit organizations from the definition of telephone solicitation. We therefore decline to extend the company-specific requirements to entities that solicit on behalf of tax-

exempt nonprofit organizations. We note that some tax-exempt nonprofit organizations have determined to honor voluntarily specific do-not-call requests. Other organizations may find it advantageous to follow this example.

70. Finally, to make clear our determination that a company must cease making telemarketing calls to a customer with whom it has an established business relationship when that customer makes a do-not-call request, we amend the company-specific do-not-call rules to apply to any call for telemarketing purposes. We also adopt a provision stating that a consumer's do-not-call request terminates the established business relationship for purposes of telemarketing calls even if the consumer continues to do business with the seller.

Interplay of Sections 222 and 227

71. We first note that the fact that a telecommunications carrier has current CPNI about a particular consumer indicates that the consumer is a customer of that carrier. In that situation, there exists an established business relationship between the customer and the carrier. *See* 47 CFR 64.1200(f)(4). The established business relationship is an exception to the national do-not-call registry. However, based on the evidence in the record and as supported by numerous commenters, we confirm our tentative conclusion that if a customer places her name on a carrier's do-not-call list, that request must be honored even though the customer may also have provided consent to use her CPNI under section 222. By doing so, we maximize the protections and choices available to consumers, while giving maximum effect to the language of both statutes. At the outset, the average consumer seems rather unlikely to appreciate the interrelationship of the Commission's CPNI and do-not-call rules. Allowing CPNI consent to trump a do-not-call request would, therefore, thwart most consumers' reasonable expectations about how a company-specific do-not-call list functions. Equally important, permitting a consumer's CPNI consent to supercede a consumer's express do-not call request might undermine the carrier's do-not-call database as the first source of information about the consumer's telemarketing preferences.

72. Because we retain the exemption for calls and messages to customers with whom the carrier has an established business relationship, the determination that a customer's CPNI approval does not trump her inclusion on a do-not-call list should have no impact on carriers' ability to communicate with their customers via telemarketing. Carriers will be able to contact customers with whom they have an established business relationship via the telephone, unless the customer has placed her name on the company's do-not-call list; whether the customer has consented to the use of her CPNI does not impact the carrier's ability to contact the customer via telemarketing.

73. We are not persuaded by the arguments of those commenters who urge the Commission to find that CPNI consent should trump a customer's request to be placed on a do-not-call list or similarly, that CPNI consent equates to permission to market ''without restriction.'' We note that the Concerned Telephone Companies assert that CPNI consent equates to ''consent to market *without restriction* based on [customers'] CPNI.'' Concerned Telephone Companies Comments at 2 (emphasis added). The Commission finds no support for this assertion in any Commission order or statutory provision and, we specifically determine that CPNI approval does not equate to unlimited consent to market without restriction.

74. Similarly, a number of commenters argue that a customer's CPNI authorization ''covers a number of forms of marketing, including telemarketing.'' AT&T Wireless Reply Comments at 26–27. However, such assertions ignore the plain fact that CPNI approval deals specifically with a carrier's use of a customer's personal information, and only indirectly pertains to or arguably ''authorizes'' marketing to the customer. Do-not-call lists, on the other hand, speak directly to customers' preferences regarding telemarketing contacts. Accordingly, we are convinced that a customer's do-not-call request demonstrates more directly her willingness (or lack thereof) to receive telemarketing calls, as opposed to any indirect inference that can be drawn from her CPNI approval.

75. Additionally, we disagree with those commenters who claim that allowing CPNI approval to trump a consumer's request to be on a national or state do-not-call list gives consumers greater flexibility. A carrier's established business relationship with a customer exempts the carrier from honoring the customer's national do-not-call request. However, as stated above, CPNI consent is not deemed to trump a carrier-specific do-not-call list request. For similar reasons, we decline to make a distinction based on what type of CPNI consent (opt-in versus opt-out) received, as some commenters urge.

76. We do not allow carriers to combine the express written consent to allow them to contact customers on a do-not-call list with the CPNI notice in the manner that AT&T Wireless describes. However, we do allow carriers to combine in the same document CPNI notice with a request for express written consent to call customers on a do-not-call list, provided that such notices and opportunities for consumer consent are separate and distinct. That is, consumers must have distinct choices regarding both whether to allow use of their CPNI and whether to allow calls after registering a do-not-call request, but carriers may combine those requests for approval in the same notice document. Finally, we find a distinction based on the type of CPNI consent unnecessary here, as carriers can avail themselves of the established business relationship exception to contact their existing customers, irrespective of the type of CPNI consent obtained.

77. Similarly, we agree with those commenters who advise against using a time element to determine whether a customer's do-not-call request takes precedence over the customer's opt-in approval to use her CPNI, because adding a time element would unnecessarily complicate carrier compliance and allow carriers to game the system. In particular, the New York State Consumer Protection Board (NYSCPB) argues that ''enrollment on a national do-not-call list should take precedence over the prior implied consent through the 'opt-out' procedure, but that the latest in time should prevail regarding 'opt-in' consents.'' NYSCPB Comments at 5. Because we determine that carriers can contact consumers with whom they have established business relationships, irrespective of those consumers' CPNI preferences, we find this proposed methodology unnecessary in determining whether a customer's CPNI consent should trump her do-not-call request. Additionally, we note that this proposal could be manipulated by carriers to overcome consumers' do-not-call preferences, by allowing carriers to send CPNI notices to customers that are intentionally timed to ''overcome'' previously expressed do-not-call requests.

78. Finally, although it was not directly raised in the 2002 Notice, some commenters raised the issue of whether any type of do-not-call request revokes or limits a carrier's ability to use CPNI in a manner other than telemarketing. To the degree such affirmation is necessary, we agree with those commenters who maintain that a carrier's ability to use CPNI is not impacted by a customer's inclusion on a do-not-call list, except as noted.

79. *Constitutional Implications.* We disagree with those commenters who argue that our decision that a customer's CPNI approval does not trump her request to be on a do-not-call list violates the First Amendment rights of carriers and customers. Commenters cite no authority to support their arguments, and we do not believe the fact that customers have given their approval for carriers to use their CPNI implicates any additional First Amendment issues beyond those discussed. Accordingly, we find our rules implementing the do-not-call registry are consistent with the First Amendment as applied to any consumer, including those who have previously given their approval to carriers to use their CPNI, pursuant to section 222. Furthermore, we believe that the exception which allows carriers to call consumers with whom they necessarily have an established business relationship renders commenters' arguments moot, as carriers necessarily have an established business relationship with any customer from whom they solicit CPNI approval.

Established Business Relationship

80. We conclude that, based on the record, an established business relationship exemption is necessary to allow companies to communicate with their existing customers. The ''established business relationship,'' or EBR, permits telemarketers to call consumers registered on the national do-not-call list and to deliver prerecorded messages to consumers. The ''established business relationship,'' however, is not an exception to the company-specific do-not-call rules. Companies that call their EBR customers must maintain company-specific do-not-call lists and record any do-not-call requests as required by amended 47 CFR 64.1200(d). The Commission has also reversed its prior conclusion that an ''established business relationship'' provides the necessary permission to deliver unsolicited facsimile advertisements. Companies maintain that the exemption allows them to make new offers to existing customers, such as mortgage refinancing, insurance updates, and subscription renewals. They suggest that customers benefit from calls that inform them in a timely manner of new products, services and pricing plans. American Express contends that its financial advisors have a fiduciary duty to their customers, requiring them to contact customers with time-sensitive information. We are persuaded that eliminating this EBR exemption would possibly interfere with these types of business relationships. Moreover, the exemption focuses on the relationship between the sender of the message and the consumer, rather than on the content of the message. It appears that consumers have come to expect calls from companies with whom they have such a relationship, and that, under certain circumstances, they may be willing to accept these calls. Finally, we believe that while consumers may find prerecorded voice messages intrusive, such messages do not necessarily impose the same costs on the recipients as, for example, unsolicited facsimile messages. Therefore, we retain the exemption for established business relationship calls from the ban on prerecorded messages. Telemarketers that claim their prerecorded messages are delivered pursuant to an established business relationship must be prepared to provide clear and convincing evidence of the existence of such a relationship.

Definition of Established Business Relationship

81. We conclude that the Commission's current definition of ''established business relationship'' should be revised. We are convinced that consumers are confused and even frustrated more often when they receive calls from companies they have not contacted or done business with for many years. The legislative history suggests that it was Congress's view that the relationship giving a company the right to call becomes more tenuous over time. In addition, we believe that this is an area where consistency between the FCC rules and FTC rules is critical for both consumers and telemarketers. We conclude that, based on the range of suggested time periods that would meet the needs of industry, along with consumers' reasonable expectations of who may call them and when, eighteen (18) months strikes an appropriate balance between industry practices and consumers' privacy interests. Therefore, the Commission has modified the definition of established business relationship to mean:

> A prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three (3) months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

See amended 47 CFR 64.1200(f)(3). The 18-month time period runs from the date of the last payment or transaction with the company, making it more likely that a consumer would expect a call from a company with which they have recently conducted business. The amended definition permits the relationship, once begun, to exist for eighteen (18) months in the case of purchases or transactions and three (3) months in the case of inquiries or applications, unless the consumer or the company ''terminates'' it. We emphasize here that the termination of an established business relationship is significant only in the context of solicitation calls. We also note that the act of ''terminating'' an established business relationship will not hinder or thwart creditors' attempts to reach debtors by telephone, to the extent that debt collection calls constitute neither telephone solicitations nor include unsolicited advertisements. Therefore, consistent with the language in the definition, a company's prior relationship with a consumer entitles the company to call that consumer for eighteen (18) months from the date of the last payment or financial transaction, even if the company does not currently provide service to that customer. For example, a consumer who once had telephone service with a particular carrier or a subscription with a particular newspaper could expect to receive a call from those entities in an effort to ''win back'' or ''renew'' that consumer's business within eighteen (18) months. In the context of telemarketing calls, a consumer's ''prior or existing relationship'' continues for eighteen (18) months (3 months in the case of inquiries and applications) or until the customer asks to be placed on that company's do-not-call list.

82. *Inquiries.* The Commission asked whether we should clarify the type of consumer *inquiry* that would create an ''established business relationship'' for purposes of the exemption. Some consumers and consumer groups maintain that a consumer who merely inquires about a product should not be subjected to subsequent telemarketing calls. Industry commenters, on the other hand, believe that companies should be permitted to call consumers who have made inquiries about their products and services, and that consumers have come to expect such calls. The legislative history suggests that Congress contemplated that an inquiry by a consumer could be the basis of an established business relationship, but that such an inquiry should occur within a reasonable period of time.

While we do not believe any communication would amount to an established business relationship for purposes of telemarketing calls, we do not think the definition should be narrowed to only include situations where a purchase or transaction is completed. The nature of any inquiry must, however, be such to create an expectation on the part of the consumer that a particular company will call them. As confirmed by several industry commenters, an inquiry regarding a business's hours or location would not establish the necessary relationship as defined in Commission rules. By making an inquiry or submitting an application regarding a company's products or services, a consumer might reasonably expect a prompt follow-up telephone call regarding the initial inquiry or application, not one after an extended period of time. Consistent with the FTC's conclusion, the Commission believes three months should be a reasonable time in which to respond to a consumer's inquiry or application. Thus, we amend the definition of ''established business relationship'' to permit telemarketing calls within three (3) months of an inquiry or application regarding a product or service offered by the company.

83. We emphasize here that the definition of ''established business relationship'' requires a voluntary two-way communication between a person or entity and a residential subscriber regarding a purchase or transaction made within eighteen (18) months of the date of the telemarketing call or regarding an inquiry or application within three (3) months of the date of the call. Any seller or telemarketer using the EBR as the basis for a telemarketing call must be able to demonstrate, with clear and convincing evidence, that they have an EBR with the called party.

84. *Different Products and Services.* The Commission also invited comment on whether to consider modifying the definition of ''established business relationship'' so that a company that has a relationship with a customer based on one type of product or service may not call consumers on the do-not-call list to advertise a different service or product. Industry commenters believe an EBR with a consumer should not be restricted by product or service, but rather, should permit them to offer the full range of their services and products. Consumer advocates who commented on the issue maintain that a company that has a relationship based on one service or product should not be allowed to use that relationship to market a different service or product. The Commission agrees with the majority of industry commenters that the EBR should not be limited by product or service. In today's market, many companies offer a wide variety of services and products. Restricting the EBR by product or service could interfere with companies' abilities to market them efficiently. Many telecommunications and cable companies, for example, market products and services in packages. As long as the company identifies itself adequately, a consumer should not be surprised to receive a telemarketing call from that company, regardless of the product being offered. If the consumer does not want any further calls from that company, he or she may request placement on its do-not-call list.

85. *Affiliated Entities.* In the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* CC Docket No. 92–90, Report and Order, 7 FCC Rcd 8752 (1992) (1992 TCPA Order), the Commission found that a consumer's established business relationship with one company may also extend to the company's affiliates and subsidiaries. *See 1992 TCPA Order,* 7 FCC Rcd at 8770–71, para. 34. Consumer advocates maintain that the EBR exemption should not automatically extend to affiliates of the company with whom a consumer has a business relationship. Industry members argue that it should apply to affiliates that provide reasonably-related products or services. The Commission finds that, consistent with the FTC's amended Rule, affiliates fall within the established business relationship exemption only if the consumer would reasonably expect them to be included given the nature and type of goods or services offered and the identity of the affiliate. This definition offers flexibility to companies whose subsidiaries or affiliates also make telephone solicitations, but it is based on consumers' reasonable expectations of which companies will call them. As the American Teleservices Association (ATA) and other commenters explain, consumers often welcome calls from businesses they know. A call from a company with which a consumer has not formed a business relationship directly, or does not recognize by name, would likely be a surprise and possibly an annoyance. This determination is also consistent with current Commission rules on the applicability of do-not-call requests made to affiliated persons or entities. Under those rules, a residential subscriber's do-not-call request will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product advertised. *See* 47 CFR 64.1200(e)(2)(v).

86. *Other Issues.* The Commission clarifies that the established business relationship exemption does not permit companies to make calls based on referrals from existing customers and clients, as the person referred presumably does not have the required business relationship with the company that received the referral. An EBR is similarly not formed when a wireless subscriber happens to use another carrier's services through roaming. In such a situation, the consumer has not made the necessary purchase or inquiry that would constitute an EBR or provided prior express consent to receive telemarketing calls from that company. We recognize that companies often hire third party telemarketers to market their services and products. In general, those telemarketers may rely on the seller's EBR to call an individual consumer to market the seller's services and products. However, we disagree with Nextel that a consumer's EBR with a third party telemarketer, including a retail store or independent dealer, extends to a seller simply because the seller has a contractual relationship with that telemarketer. The seller would only be entitled to call a consumer under the EBR exemption based on its own EBR with a consumer. We also disagree with WorldCom, Inc. (WorldCom) that the EBR should extend to marketing partners for purposes of telemarketing joint offers, to the extent the ''partner'' companies have no EBR with the consumer.

Telecommunications Common Carriers

87. In the 2002 Notice, we asked what effect the established business relationship exemption might have on the telecommunications industry, if a national do-not-call list is established. According to WorldCom, telephone solicitations are the primary mechanism for, and the means by which consumers are accustomed to, purchasing competitive telecommunications services. WorldCom argues that with the advent of competition in the formerly monopolized local telephone markets, and the entry of the Regional Bell Operating Companies into the long distance market, carriers need to be able to market effectively their new services. WorldCom argues that a national do-not-call list that exempts calls to persons with whom a company has established business relationships will favor incumbent providers. According to WorldCom, incumbent local exchange carriers maintain most of the

local customer base, and therefore would be able to telemarket new services to all those customers, regardless of whether they were on the national do-not-call registry, because of the established business relationship exemption. New competitors, on the other hand, would be restricted from calling those same consumers.

88. One approach would be to narrow the ''established business relationship'' for telecommunications carriers, so that a carrier doing business with customers based on one type of service may not call those customers registered with the national do-not-call list to advertise a different service. We find, however, that the record does not support such an approach in the context of telemarketing calls. Along with the majority of industry commenters in this proceeding, WorldCom maintains that companies ''must have flexibility in communicating with their customers not only about their current services, but also to discuss available alternative services or products. * * *'' WorldCom Comments at 15. Limiting a common carrier's ''established business relationship'' by product or service might harm competitors'' efforts to market new goods or services to existing customers, and would not be in the public interest.

89. WorldCom proposes instead that the Commission revise the definition of established business relationship so that all providers of a telecommunications service—incumbents and new entrants alike—are deemed to have an established business relationship with all consumers. Alternatively, WorldCom suggests that the definition of an established business relationship be revised to exclude a company whose relationship with a consumer is based solely on a service for which the company has been a dominant or monopoly provider of the service, until such time as competitors for that service have sufficiently penetrated the market.

90. Although we take seriously WorldCom's concerns about the potential effects of a national do-not-call list on competition in the telecommunications marketplace, we decline to expand the definition of ''established business relationship'' so that common carriers are deemed to have relationships with all consumers for purposes of making telemarketing calls. Broadening the scope of the established business relationship in such a way would be inconsistent with Congress's mandate ''to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.'' *See* 47 U.S.C. 227(c)(1). To permit common carriers to call consumers with whom they have no existing relationships and who have expressed a desire not to be called by registering with the national do-not-call list, would likely confuse consumers and interfere with their ability to manage and monitor the telemarketing calls they receive.

91. We further note that with the establishment of a national do-not-call registry, carriers will still be permitted to contact competitors' customers who have not placed their numbers on the national list. In addition, carriers will be able to call their prior and existing customers for 18 months to market new products and services, such as long distance, local, or DSL services, as long as those customers have not placed themselves on that carrier's company-specific do-not-call list. For the remaining consumers with whom common carriers have no established business relationship and who are registered with the do-not-call list, carriers may market to them using different advertising methods, such as direct mail. Therefore, we find that treating common carriers like other entities that use the telephone to advertise, best furthers the goals of the TCPA to protect consumer privacy interests and to avoid interfering with existing business relationships.

Interplay Between Established Business Relationship and Do-Not-Call Request

92. In the 2002 Notice, we sought comment on the effect of a do-not-call request on an established business relationship. We noted the legislative history on this issue, which suggests that despite an established business relationship, a company that has been asked by a consumer not to call again, must honor that request and avoid further calls to that consumer. Consumer advocates who discussed the interplay between the established business relationship and a do-not-call request maintained that a do-not-call request should ''trump'' an established business relationship, and that consumers should not be required to terminate business relationships in order to stop unwanted telemarketing calls. The majority of industry commenters also supported the notion that companies should honor requests from individual consumers not to be called, regardless of whether there is a business relationship. Companies will be permitted to call consumers with whom they have an established business relationship for a period of 18 months from the last payment or transaction, even when those consumers are registered on the national do-not-call list, as long as a consumer has not asked to be placed on the company's do-not-call list. Once the consumer asks to be placed on the company-specific do-not-call list, the company may not call the consumer again regardless of whether the consumer continues to do business with the company. This will apply to all services and products offered by that company. If the consumer continues to do business with the telemarketer after asking not to be called (by, for example, continuing to hold a credit card, subscribing to a newspaper, or making a subsequent purchase), the consumer cannot be deemed to have waived his or her company-specific do-not-call request. In some instances, however, a consumer may grant explicit consent to be called during the course of a subsequent purchase or transaction. We amend the company-specific do-not-call rules to apply to ''any call for telemarketing purposes'' to make clear that a company must cease making telemarketing calls to any customer who has made a do-not-call request, regardless of whether they have an EBR with that customer. We also adopt a provision stating that a consumer's do-not-call request terminates the EBR for purposes of telemarketing calls even if the consumer continues to do business with the seller.

Tax-Exempt Nonprofit Organization Exemption

93. We reaffirm the determination that calls made by a for-profit telemarketer hired to solicit the purchase of goods or services or donations on behalf of a tax-exempt nonprofit organization are exempted from the rules on telephone solicitation. We again reiterate that calls that do not fall within the definition of ''telephone solicitation'' as defined in 47 U.S.C. 227(a)(3) will not be precluded by the national do-not-call list. These may include calls regarding surveys, market research, and calls involving political and religious discourse. In crafting the TCPA, Congress sought primarily to protect telephone subscribers from unrestricted commercial telemarketing activities, finding that most unwanted telephone solicitations are commercial in nature. In light of the record before us, the Commission believes that there has been no change in circumstances that warrant distinguishing those calls made by a professional telemarketer on behalf of a tax-exempt nonprofit organization from those made by the tax-exempt nonprofit itself. The Commission recognizes that charitable and other nonprofit entities with limited expertise, resources and infrastructure, might find it advantageous to contract out its

fundraising efforts. Consistent with section 227, a tax-exempt nonprofit organization that conducts its own fundraising campaign or hires a professional fundraiser to do it, will not be subject to the restrictions on telephone solicitations. If, however, a for-profit organization is delivering its own commercial message as part of a telemarketing campaign (*i.e.*, encouraging the purchase or rental of, or investment in, property, goods, or services), even if accompanied by a donation to a charitable organization or referral to a tax-exempt nonprofit organization, that call is not *by or on behalf of a tax-exempt nonprofit organization.* Such calls, whether made by a live telemarketer or using a prerecorded message, would not be entitled to exempt treatment under the TCPA. Similarly, an affiliate of a tax-exempt nonprofit organization that is itself not a tax-exempt nonprofit is not exempt from the TCPA rules when it makes telephone solicitations. We emphasize here, as we did in the 2002 Notice, that the statute and our rules clearly apply already to messages that are predominantly commercial in nature, and that we will not hesitate to consider enforcement action should the provider of an otherwise commercial message seek to immunize itself by simply inserting purportedly ''non-commercial'' content into that message. A call to sell debt consolidation services, for example, is a commercial call regardless of whether the consumer is also referred to a tax-exempt nonprofit organization for counseling services. Similarly, a seller that calls to advertise a product and states that a portion of the proceeds will go to a charitable cause or to help find missing children must still comply with the TCPA rules on commercial calls.

Automated Telephone Dialing Equipment

Predictive Dialers

94. *Automated Telephone Dialing Equipment.* The record demonstrates that a predictive dialer is equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a sales agent will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers. As commenters point out, in most cases, telemarketers program the numbers to be called into the equipment, and the dialer calls them at a rate to ensure that when a consumer answers the phone, a sales person is available to take the call. The principal feature of predictive dialing software is a timing function, not number storage or generation. Household Financial Services states that these machines are not conceptually different from dialing machines without the predictive computer program attached.

95. The TCPA defines an ''automatic telephone dialing system'' as ''equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.'' 47 U.S.C. 227(a)(1). The statutory definition contemplates autodialing equipment that either stores or produces numbers. It also provides that, in order to be considered an ''automatic telephone dialing system,'' the equipment need only have the ''*capacity* to store or produce telephone numbers (emphasis added) * * *.'' It is clear from the statutory language and the legislative history that Congress anticipated that the FCC, under its TCPA rulemaking authority, might need to consider changes in technologies. In the past, telemarketers may have used dialing equipment to create and dial 10-digit telephone numbers arbitrarily. As one commenter points out, the evolution of the teleservices industry has progressed to the point where using lists of numbers is far more cost effective. The basic function of such equipment, however, has not changed—the *capacity* to dial numbers without human intervention. We fully expect automated dialing technology to continue to develop.

96. The legislative history also suggests that through the TCPA, Congress was attempting to alleviate a particular problem—an increasing number of automated and prerecorded calls to certain categories of numbers. The TCPA does not ban the use of technologies to dial telephone numbers. It merely prohibits such technologies from dialing emergency numbers, health care facilities, telephone numbers assigned to wireless services, and any other numbers for which the consumer is charged for the call. Such practices were determined to threaten public safety and inappropriately shift marketing costs from sellers to consumers. Coupled with the fact that autodialers can dial thousands of numbers in a short period of time, calls to these specified categories of numbers are particularly troublesome. Therefore, to exclude from these restrictions equipment that use predictive dialing software from the definition of ''automated telephone dialing equipment'' simply because it relies on a given set of numbers would lead to an unintended result. Calls to emergency numbers, health care facilities, and wireless numbers would be permissible when the dialing equipment is paired with predictive dialing software and a database of numbers, but prohibited when the equipment operates independently of such lists and software packages. We believe the purpose of the requirement that equipment have the ''capacity to store or produce telephone numbers to be called'' is to ensure that the prohibition on autodialed calls not be circumvented. *See* 47 U.S.C. 227(a)(1). Therefore, the Commission finds that a predictive dialer falls within the meaning and statutory definition of ''automatic telephone dialing equipment'' and the intent of Congress. Because the statutory definition does not turn on whether the call is made for marketing purposes, we also conclude that it applies to modems that have the ''capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.'' *See* 47 U.S.C. 227(a)(1).

97. *Predictive Dialers as Customer Premises Equipment.* A few commenters maintain that predictive dialers are Customer Premises Equipment (CPE) over which the Communications Act gives the FCC exclusive jurisdiction. The ATA and Direct Marketing Association (DMA) urge the Commission to assert exclusive authority over CPE and, in the process, preempt state laws governing predictive dialers. They contend that, in the absence of a single national policy on predictive dialer use, telemarketers will be subject to the possibility of conflicting state standards. In the past, CPE was regulated as a common carrier service based on the Commission's jurisdiction and statutory responsibilities over *carrier-provided* equipment. The Commission long ago deregulated CPE, finding that the CPE market was becoming increasingly competitive, and that in order to increase further the options that consumers had in obtaining equipment, it would require common carriers to separate the provision of CPE from the provision of telecommunications services. As part of its review of CPE regulations, the Commission pointed out that it had never regarded the provision of terminal equipment in isolation as an activity subject to Title II regulation. While the Commission recognized that such equipment is within the FCC's authority over wire and radio communications, it found that the equipment, by itself, is not a

''communication'' service, and therefore there was no mandate that it be regulated. None of the commenters who argue this point describe a change in circumstances that would warrant reevaluating the Commission's earlier determination and risk disturbing the competitive balance the Commission deemed appropriate in 1980. In addition, it is not the equipment itself that states are considering regulating; it is the use of such equipment that has caught the attention of some state legislatures. We believe it is preferable at this time to regulate the use of predictive dialers under the TCPA's specific authority to regulate telemarketing practices. Therefore, we decline to preempt state laws governing the use of predictive dialers and abandoned calls or to regulate predictive dialers as CPE.

''War Dialing''

98. In the 2002 Notice, the Commission sought comment on the practice of using autodialers to dial large blocks of telephone numbers in order to identify lines that belong to telephone facsimile machines. Of those commenters who weighed in on ''war dialing'' (using automated equipment to dial telephone numbers, generally sequentially, and software to determine whether each number is associated with a fax line or voice line), there was unanimous support for a ban on the practice. Commenters explained that ringing a telephone for the purpose of determining whether the number is associated with a fax or voice line is an invasion of consumers' privacy interests and should be prohibited. Moreover, they asserted there is no free speech issue when the caller has no intention of speaking with the called party. The TCPA prohibits the transmission of unsolicited facsimile advertisements absent the consent of the recipient. The Commission agrees that because the purpose of ''war dialing'' is to identify those numbers associated with facsimile machines, the practice serves few, if any, legitimate business interests and is an intrusive invasion of consumers' privacy. Therefore, the Commission adopts a rule that prohibits the practice of using any technology to dial any telephone number for the purpose of determining whether the line is a fax or voice line.

Artificial or Prerecorded Voice Messages

Offers for Free Goods or Services; Information-Only Messages

99. Congress found that ''residential telephone subscribers consider automated or prerecorded telephone calls * * * to be a nuisance and an invasion of privacy.'' *TCPA,* Section 2(10), *reprinted in* 7 FCC Rcd at 2744. It also found that ''[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.'' *TCPA,* Section 2(12), *reprinted in* 7 FCC Rcd at 2744–45. Congress determined that such prerecorded messages cause greater harm to consumers' privacy than telephone solicitations by live telemarketers. The record reveals that consumers feel powerless to stop prerecorded messages largely because they are often delivered to answering machines and because they do not always provide a means to request placement on a do-not-call list.

100. Additionally, the term ''unsolicited advertisement'' means ''any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.'' 47 U.S.C. 227(a)(4); 47 CFR 64.1200(f)(5). The TCPA's definition does not require a sale to be made during the call in order for the message to be considered an advertisement. Offers for free goods or services that are part of an overall marketing campaign to sell property, goods, or services constitute ''advertising the commercial availability or quality of any property, goods, or services.'' *See* 47 U.S.C. 227(a)(4). Therefore, the Commission finds that prerecorded messages containing free offers and information about goods and services that are commercially available are prohibited to residential telephone subscribers, if not otherwise exempted. For example, a prerecorded message that contains language describing a new product, a vacation destination, or a company that will be in ''your area'' to perform home repairs, and asks the consumer to call a toll-free number to ''learn more,'' is an ''unsolicited advertisement'' under the TCPA if sent without the called party's express invitation or permission. *See* 47 U.S.C. 227(a)(4). However, as long as the message is limited to identification information only, such as name and telephone number, it will not be considered an ''unsolicited advertisement'' under our rules.

101. In addition, we amend the prerecorded message rule at 47 CFR 64.1200(c)(2) so that the prohibition expressly applies to messages that constitute ''telephone solicitations,'' as well as to those that include or introduce an ''unsolicited advertisement.'' The current rule exempts from the prohibition any call that is made for a commercial purpose but does not include the transmission of any unsolicited advertisement. *See* 47 CFR 64.1200(c)(2). We amend the rule to exempt a call that is made for a commercial purpose but does not include or introduce an unsolicited advertisement or *constitute a telephone solicitation. See* amended rule at 47 CFR 64.1200(a)(2)(iii). We agree with those commenters who suggest that application of the prerecorded message rule should turn, not on the caller's characterization of the call, but on the purpose of the message. Amending the rule to apply to messages that constitute ''telephone solicitations,'' is consistent with the goals of the TCPA and addresses the concerns raised by commenters about purported ''free offers.'' In addition, we believe the amended rule will afford consumers a greater measure of protection from unlawful prerecorded messages and better inform the business community about the general prohibition on such messages.

102. The so-called ''dual purpose'' calls described in the record—calls from mortgage brokers to their clients notifying them of lower interest rates, calls from phone companies to customers regarding new calling plans, or calls from credit card companies offering overdraft protection to existing customers—would, in most instances, constitute ''unsolicited advertisements,'' regardless of the customer service element to the call. The Commission explained in the 2002 Notice that such messages may inquire about a customer's satisfaction with a product already purchased, but are motivated in part by the desire to sell ultimately additional goods or services. If the call is intended to offer property, goods, or services for sale either during the call, or in the future (such as in response to a message that provides a toll-free number), that call is an advertisement. Similarly, a message that seeks people to help sell or market a business' products, constitutes an advertisement if the individuals called are encouraged to purchase, rent, or invest in property, goods, or services, during or after the call. However, the Commission points out that, if the message is delivered by a company that has an established business relationship with the recipient, it would be permitted under our rules.

We also note that absent an established business relationship, the telemarketer must first obtain the prior express consent of the called party in order to lawfully initiate the call. Purporting to obtain consent during the call, such as requesting that a consumer ''press 1'' to receive further information, does not constitute the *prior* consent necessary to deliver the message in the first place, as the request to ''press 1'' is part of the telemarketing call.

Identification Requirements

103. The TCPA rules require that all artificial or prerecorded messages delivered by an automatic telephone dialing system identify the business, individual, or other entity initiating the call, and the telephone number or address of such business, individual or other entity. *See* 47 CFR 64.1200(d). Additionally, the Commission's rules contain identification requirements that apply without limitation to ''any telephone solicitation to a residential telephone subscriber.'' 47 CFR 64.1200(e)(2)(iv). The term ''telephone solicitation'' is defined to mean ''the initiation of a telephone call or *message* for the purpose of encouraging the purchase or rental of * * * property, goods, or services * * *'' (emphasis added). 47 CFR 64.1200(f)(3). We sought comment, however, on whether we should modify our rules to state expressly that the identification requirements apply to otherwise lawful artificial or prerecorded messages, as well as to live solicitation calls.

104. The vast majority of consumer and industry commenters support modifying the rules to provide expressly that telemarketers must comply with the identification requirements when delivering prerecorded messages. Some consumers urge the Commission to require specifically that companies provide the name of the company under which it is registered to do business. They explain that a company will often use a ''d/b/a'' (''doing business as'') or ''alias'' in the text of the prerecorded message, making it difficult to identify the company calling. The Commission recognizes that adequate identification information is vital so that consumers can determine the purpose of the call, possibly make a do-not-call request, and monitor compliance with the TCPA rules. Therefore, we are amending our rules to require expressly that all prerecorded messages, whether delivered by automated dialing equipment or not, identify the name of the business, individual or other entity that is responsible for initiating the call, along with the telephone number of such business, other entity, or individual. With respect to the caller's name, the prerecorded message must contain, at a minimum, the legal name under which the business, individual or entity calling is registered to operate. The Commission recognizes that some businesses use ''d/b/as'' or aliases for marketing purposes. The rule does not prohibit the use of such additional information, provided the legal name of the business is also stated. The rule also requires that the telephone number stated in the message be one that a consumer can use during normal business hours to ask not to be called again.[2] If the number provided in the message is that of a telemarketer hired to deliver the message, the company on whose behalf the message is sent is nevertheless liable for failing to honor any do-not-call request. This is consistent with the rules on live solicitation calls by telemarketers. If a consumer asks not to be called again, the telemarketer must record the do-not-call request, and the company on whose behalf the call was made must honor that request.

Radio Station and Television Broadcaster Calls

105. The TCPA prohibits the delivery of prerecorded messages to residential telephone lines without the prior express consent of the called party. 47 U.S.C. 227(b)(1)(B). Commission rules exempt from the prohibition calls that are made for a commercial purpose but do not include any unsolicited advertisement. 47 CFR 64.1200(c)(2). The Commission sought comment on prerecorded messages sent by radio stations or television broadcasters that encourage telephone subscribers to tune in at a particular time for a chance to win a prize or similar opportunity. We asked whether the Commission should specifically address these kinds of calls, and if so, how. The record reveals that such calls by radio stations and television broadcasters do not at this time warrant the adoption of new rules. Few commenters in this proceeding described either receiving such messages or that they were particularly problematic. The few commenters who addressed the issue were split on whether such messages fall within the TCPA's definition of ''unsolicited advertisement'' and are thus subject to the restrictions on their delivery. We conclude that if the purpose of the message is merely to invite a consumer to listen to or view a broadcast, such message is permitted under the current rules as a commercial call that ''does not include the transmission of any unsolicited advertisement'' and under the amended rules as ''a commercial call that does not include or introduce an unsolicited advertisement or constitute a telephone solicitation.'' *See* amended 47 CFR 64.1200(a)(2)(iii). However, messages that encourage consumers to listen to or watch programming, including programming that is retransmitted broadcast programming for which consumers must pay (*e.g.,* cable, digital satellite, *etc.*), would be considered advertisements for purposes of our rules. The Commission reiterates, however, that messages that are part of an overall marketing campaign to encourage the purchase of goods or services or that describe the commercial availability or quality of any goods or services, are ''advertisements'' as defined by the TCPA. Messages need not contain a solicitation of a sale during the call to constitute an advertisement.

Abandoned Calls

106. Given the arguments raised on both sides of this issue as well as the FTC's approach to the problem, the Commission has determined to adopt a rule to reduce the number of abandoned calls consumers receive. Under the new rules, telemarketers must ensure that any technology used to dial telephone numbers abandons no more than three (3) percent of calls answered by a person, measured over a 30-day period. A call will be considered abandoned if it is not transferred to a live sales agent within two (2) seconds of the recipient's completed greeting. When a call is abandoned within the three (3) percent maximum allowed, a telemarketer must deliver a prerecorded identification message containing only the telemarketer's name, telephone number, and notification that the call is for ''telemarketing purposes.'' To allow time for a consumer to answer the phone, the telemarketer must allow the phone to ring for fifteen seconds or four rings before disconnecting any unanswered call. Finally, telemarketers

[2] This would be 9 a.m.–5 p.m., Monday through Friday, during the particular telemarketing campaign. A seller or telemarketer's telephone number must permit consumers to make their do-not-call requests in a timely manner. Therefore, the seller or telemarketer must staff the ''do-not-call number'' sufficiently or use an automated system for processing requests in such a way that consumers are not placed on hold or forced to wait for an agent to answer the connection for an unreasonable length of time. We also reiterate the Commission's determination in its *1995 TCPA Reconsideration Order* that any number provided for identification purposes may not be a number that requires the recipient of a solicitation to incur more than nominal costs for making a do-not-call request (*i.e.,* for which charges exceed costs for transmission of local or ordinary station-to-station long distance calls). *See 1995 TCPA Reconsideration Order,* 10 FCC Rcd 12391, 12409, para. 38. *See also* amended 47 CFR 64.1200(b)(2).

using predictive dialers must maintain records that provide clear and convincing evidence that the dialers used comply with the three (3) percent call abandonment rate, ''ring time'' and two-second-transfer rule.

Maximum Rate on Abandoned Calls

107. The Commission believes that establishing a maximum call abandonment rate is the best option to reduce effectively the number of hang-ups and ''dead air'' calls consumers experience. We recognize that industry generally advocates a five percent abandonment rate, claiming that a rate lower than five percent would reduce efficiencies the technology provides. Some industry commenters indicate that a 3 percent rate still obtains productivity benefits. However, the Commission is not convinced that a five percent rate will lead to a reasonable reduction in the number of abandoned calls. The DMA's current guideline, cited by many commenters, calls for an abandonment rate of no higher than five percent. And several telemarketers maintain that they now utilize an abandonment rate of five percent or lower in their calling campaigns. Consumers nevertheless report receiving as many as 20 dropped calls per day that interrupt dinners, interfere with home business operations, and sometimes frighten the elderly and parents with young children. A rule that is consistent with the FTC's will effectively create a national standard with which telemarketers must comply and should lead to fewer abandoned calls, while permitting telemarketers to continue to benefit from such technology. It is also responsive to Congress' mandate in the Do-Not-Call Act to maximize consistency with the FTC's rules.

108. The three percent abandonment rate will be measured over a 30-day period, a standard supported by several industry commenters. Industry members maintain that measuring the abandonment rate on a per day basis would severely curtail the efficiencies gained from the use of predictive dialers, and may be overly burdensome to smaller telemarketers. A per day measurement, they argue, would not account for short-term fluctuations in marketing campaigns. They further argue that the impact of abandoned calls on consumers depends more on the aggregate number of contacts made by a telemarketer over time and not on the number in any given day. The Commission believes that a three (3) percent abandonment rate measured over a 30-day period will ensure that consumers consistently receive fewer disconnected calls, and that telemarketers are permitted to manage their calling campaigns effectively under the new rules on abandoned calls. Although we recognize that this rate of measurement differs from the FTC's rule, we believe a rate measured over a longer period of time will allow for variations in telemarketing campaigns such as calling times, number of operators available, number of telephone lines used by the call centers, and other similar factors. The record also suggests that an abandonment rate measured over a 30-day period will allow telemarketers to more easily comply with the recordkeeping requirements associated with the use of predictive dialers.

Two-Second-Transfer Rule

109. The record confirms that many consumers are angered by the ''dead air'' they often face when answering the telephone. Running to the telephone only to be met by silence can be frustrating and even frightening, if the caller cannot be identified. To address the problem of ''dead air'' produced by dialing technologies, the Commission has determined that a call will be considered abandoned if the telemarketer fails to connect the call to a sales representative within two (2) seconds of the person's completed greeting. Calls disconnected because they were never answered (within the required 15 seconds or 4 rings) or because they received busy signals will not be considered abandoned. Calls that reach voicemail or an answering machine will not be considered ''answered'' by the called party. Therefore, a call that is disconnected upon reaching an answering machine will not be considered an abandoned call. This requirement is consistent with the FTC's rule.

110. *Answering Machine Detection.* Opposition from industry to the two-second-transfer requirement appears to be based largely on its implications for use of Answering Machine Detection (AMD). Some industry members explain that AMD is used by telemarketers to detect answering machines, and thereby avoid leaving messages on them. The ATA and DMA maintain that if telemarketers are required to connect to a sales agent or message within 1–2 seconds, a large percentage of calls reaching answering machines will be transferred to sales agents, thereby reducing the efficiencies gained from AMD. According to these commenters, 1–2 seconds is often insufficient for AMD to determine accurately if the call has reached an answering machine. Other commenters explain that AMD is used instead by telemarketers to transmit prerecorded messages to answering machines; in such circumstances, calls that reach live persons are disconnected. It is unclear from the record how prevalent the use of AMD is in the telemarketing industry. One commenter stated that the elimination of AMD would put ''consumer-oriented'' telemarketing firms out of business. However, other industry members acknowledge that AMD contributes significantly to the amount of ''dead air'' consumers experience, and one large telemarketing firm maintains that AMD should be banned completely. The Commission believes that the record does not warrant a ban on the use of AMD. Instead, if the AMD technology is deployed in such a way that the delay in transfer time to a sales agent is limited to two seconds, then its continued use should not adversely affect consumers' privacy interests.

Prerecorded Message for Identification

111. The FTC's ''safe harbor'' provisions require that, when a sales agent is unavailable to speak to a person answering the phone, marketers deliver a prerecorded message that states the name and telephone number of the seller on whose behalf the call was made. The Commission has similarly determined that when a telemarketer abandons a call under the three (3) percent rate allowed, the telemarketer must deliver a prerecorded message containing the name of the business, individual or other entity initiating the call, as well as the telephone number of such business, individual or other entity. The message must also state that the call is for ''telemarketing purposes.'' By requiring such notice, we believe consumers will be less likely to return the call simply to learn the purpose of the call and possibly incur unnecessary charges. We recognize that many consumers are frustrated with prerecorded messages. However, the record also reveals that consumers are frightened and angered by ''dead air'' calls and repeated hang-ups. A prerecorded message, limited to identification information only, should mitigate the harms that result from ''dead air,'' as consumers will know who is calling them. And, they will more easily be able to make a do-not-call request of a company by calling the number provided in the message. We note that such messages sent in excess of the three (3) percent allowed under the call abandonment rate, will be considered abandoned calls, unless otherwise permitted by our rules. The content of the message must be limited

to name and telephone number, along with a notice to the called party that the call is for ''telemarketing purposes.'' The message may not be used to deliver an unsolicited advertisement. As long as the message is limited to identification information only, it will not be considered an ''unsolicited advertisement'' under our rules. We caution that additional information in the prerecorded message constituting an unsolicited advertisement would be a violation of our rules, if not otherwise permitted under 47 CFR 64.1200(a)(2).

Established Business Relationship

112. While the TCPA prohibits telephone calls to residential phone lines using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, the Commission determined that the TCPA permits an exemption for established business relationship calls from the restriction on artificial or prerecorded message calls to residences. The record reveals that an established business relationship exemption is necessary to allow companies to contact their existing customers. Companies currently use prerecorded messages, for example, to notify their customers about new calling plans, new mortgage rates, and seasonal services such as chimney sweeping and lawn care. Therefore, prerecorded messages sent by companies to customers with whom they have an established business relationship will not be considered ''abandoned'' under the revised rules, if they are delivered within two (2) seconds of the person's completed greeting. Similarly, any messages initiated with the called party's prior express consent and delivered within two (2) seconds of the called person's completed greeting are not ''abandoned'' calls under the new rules. Such messages must identify the business, individual or entity making the call and contain a telephone number that a consumer may call to request placement on a do-not-call list. We recognize that the established business relationship exception to the prohibition on prerecorded messages conflicts with the FTC's amended rule. However, for the reasons described above, we believe the current exception is necessary to avoid interfering with ongoing business relationships.

Ring Duration

113. The Commission also adopts a requirement that telemarketers allow the phone to ring for 15 seconds or four (4) rings before disconnecting any unanswered call. This standard is consistent with that of the FTC, similar to current DMA guidelines, and used by some telemarketers already. One industry commenter asserted that telemarketers often set the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned. The practice of ringing and then disconnecting the call before the consumer has an opportunity to answer the phone is intrusive of consumer privacy and serves only to increase efficiencies for telemarketers. Moreover, in discussing the interplay between the FTC's rules with the Commission's rules, very few commenters opposed the ''ring time'' requirement adopted by the FTC, or raised any particular concerns about how it might work in the TCPA framework. Therefore, given the substantial interest in protecting consumers' privacy interests, as well as Congress's direction to maximize consistency with the FTC's rules, we have determined to adopt the 15 second or four (4) ring requirement.

114. Finally, consistent with the FTC's rules, the Commission has determined that telemarketers must maintain records establishing that the technology used to dial numbers complies with the three (3) percent call abandonment rate, ''ring time,'' and two-second rule on connecting to a live sales agent. Telemarketers must provide such records in order to demonstrate compliance with the call abandonment rules. Only by adopting a recordkeeping requirement will the Commission be able to enforce adequately the rules on the use of predictive dialers.

115. The TCPA seeks primarily to protect subscribers from unrestricted commercial telemarketing calls, and therefore exempts calls or messages by tax-exempt nonprofit organizations from the definition of telephone solicitation. Therefore, the Commission has determined not to extend the call abandonment rules to tax-exempt nonprofit organizations in the absence of further guidance from Congress. Because this will result in an inconsistency with the FTC's rules, we will discuss the call abandonment rules in the report due to Congress within 45 days after the promulgation of final rules. *See* Do-Not-Call Act, Section 4. However, the call abandonment rules will apply to all other companies engaged in telemarketing, and the existence of an established business relationship between the telemarketer and consumer will not be an exception to these rules. For these entities, the call abandonment rules will become effective on October 1, 2003. We decline to establish an effective date beyond October 1, 2003, which is consistent with the date that telemarketers must comply with the FTC's call abandonment rules. This should permit telemarketers to make any modifications to their autodialing equipment or purchase any new software to enable them to comply with the three (3) percent call abandonment rate, the prerecorded message requirement and the two-second-transfer rule.

Wireless Telephone Numbers

Telemarketing Calls to Wireless Numbers

116. We affirm that under the TCPA, it is unlawful to make *any call* using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. *See* 47 U.S.C. 227(b)(1). Both the statute and our rules prohibit these calls, with limited exceptions, ''to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged.'' 47 U.S.C. 227(b)(1)(A)(iii). This encompasses both voice calls and text calls to wireless numbers including, for example, short message service calls, provided the call is made to a telephone number assigned to such service. Congress found that automated or prerecorded telephone calls were a greater nuisance and invasion of privacy than live solicitation calls. Moreover, such calls can be costly and inconvenient. The Commission has long recognized, and the record in this proceeding supports the same conclusion, that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. Wireless subscribers who purchase a large ''bucket'' of minutes at a fixed rate nevertheless are charged for those minutes, and for any minutes that exceed the ''bucket'' allowance. This ''bucket'' could be exceeded more quickly if consumers receive numerous unwanted telemarketing calls. Moreover, as several commenters point out, telemarketers have no way to determine how consumers are charged for their wireless service.

117. Although the same economic and safety concerns apply to all telephone solicitation calls received by wireless subscribers, the Commission has determined not to prohibit all live telephone solicitations to wireless numbers. We note, however, that the TCPA already prohibits live solicitation calls to wireless numbers using an autodialer. *See* 47 U.S.C. 227(b)(1). The national do-not-call database will allow for the registration of wireless telephone

numbers for those subscribers who wish to avoid live telemarketing calls to their wireless phones. Wireless subscribers thus have a simple means of preventing most live telemarketing calls if they so desire. Registration on the do-not-call database will not prevent calls from entities that have an established business relationship with a wireless subscriber. Wireless subscribers who receive such live calls can easily make a company-specific do-not-call request. Moreover, relying on the do-not-call database to control live telephone solicitations recognizes that prohibiting such calls to wireless numbers may unduly restrict telemarketers' ability to contact those consumers who do not object to receiving telemarketing calls and use their wireless phones as either their primary or only phone.

118. The Commission's rules provide that companies making telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. *See* 47 CFR 64.1200(e). We conclude that these rules apply to calls made to wireless telephone numbers. We believe that wireless subscribers should be afforded the same protections as wireline subscribers.

Wireless Number Portability and Pooling

119. Based on the evidence in the record, we find that it is not necessary to add rules to implement the TCPA as a result of the introduction of wireless Local Number Portability (LNP) and thousands-block number pooling. The TCPA rules prohibiting telemarketers from placing autodialed and prerecorded message calls to wireless numbers have been in place for twelve years. Further, the Commission's pooling requirements have been in place for several years and the porting requirements have been in place for over five years. Accordingly, telemarketers have received sufficient notice of these requirements in order to develop business practices that will allow them to continue to comply with the TCPA.

120. Additionally, telemarketers have taken measures in the past to identify wireless numbers, and there is no indication that these measures would not continue to be effective for identifying wireless numbers affected by pooling and porting. As noted above, the industry currently makes use of a variety of tools to enable it to avoid making prohibited calls. The record provides a sampling of methods, including the DMA's ''Wireless Telephone Suppression Service,'' that telemarketers use to avoid making prohibited calls to wireless numbers.

121. LNP and pooling do not make it impossible for telemarketers to comply with the TCPA. The record demonstrates that information is available from a variety of sources to assist telemarketers in determining which numbers are assigned to wireless carriers. For example, NeuStar, Inc. as the North American Numbering Plan Administrator, the National Pooling Administrator, and the LNP Administrator makes information available that can assist telemarketers in identifying numbers assigned to wireless carriers. Also, other commercial enterprises such as Telcordia, the owner-operator of the Local Exchange Routing Guide maintain information that can assist telemarketers in identifying numbers assigned to wireless carriers. We acknowledge that beginning November 24, 2003, numbers previously used for wireline service could be ported to wireless service providers and that telemarketers will need to take the steps necessary to identify these numbers. We also note that there are various solutions that will enable telemarketers to identify wireless numbers in a pooling and number portability environment. We decline to mandate a specific solution, but rather rely on the telemarketing industry to select solutions that best fit telemarketers' needs. The record demonstrates that telemarketers have found adequate methods in the past to comply with the TCPA's prohibition on telephone calls using an autodialer or an artificial or prerecorded voice message to any telephone number assigned to a cellular telephone service, a paging service, or any service for which the called party is charged for the call. We expect telemarketers to continue to make use of the tools available in the marketplace in order to ensure continued compliance with the TCPA.

122. Moreover, the record indicates that telemarketing to wireless phones is not a significant problem, indicating that the industries' voluntary efforts have been successful. Commenters further declare that the wireless and telemarketing industries have been actively working together to ensure that telemarketing does not become a problem for wireless customers.

123. Finally, we reject proposals to create a good faith exception for inadvertent autodialed or prerecorded calls to wireless numbers and proposals to create implied consent because we find that there are adequate solutions in the marketplace to enable telemarketers to identify wireless numbers.

Caller Identification

124. The Commission has determined to require all sellers and telemarketers to transmit caller ID information, regardless of their calling systems. In addition, any person or entity engaging in telemarketing is prohibited from blocking the transmission of caller ID information. Caller ID information must include either ANI or Calling Party Number (CPN) and, when available by the telemarketer's carrier, the name of the telemarketer. If the information required is not passed through to the consumer, through no fault of the telemarketer originating the call, then the telemarketer will not be held liable for failure to comply with the rules. In such a circumstance, the telemarketer must provide clear and convincing evidence that the caller ID information could not be transmitted. However, the Commission concurs with the FTC that caller ID information can be transmitted cost effectively for the vast majority of calls made by telemarketers. Caller ID allows consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again. Knowing the identity of the caller is also helpful to consumers who feel frightened or threatened by hang-up and ''dead air'' calls. We disagree with those commenters who argue that caller ID information only benefits those consumers who subscribe to caller ID services. Consumers can also use the *69 feature to obtain caller ID information transmitted by a telemarketer. The *69 feature, available through many subscribers' telephone service providers, provides either: (1) Information regarding the last incoming call, and the option to dial the caller back, or (2) the ability to return the last incoming call. Call information, however, would not be available for an incoming call, if the caller failed to transmit caller ID information or blocked such information. Caller ID also should increase accountability and provide an important resource for the FCC and FTC in pursuing enforcement actions against TCPA and TSR violators.

125. We conclude that while SS7 capability is not universally available, the vast majority of the United States has access to SS7 infrastructure. The SS7 network contains functionality to transmit both the CPN and the charge number. ''Charge number'' is defined in 47 CFR 64.1600(d) and refers to the delivery of the calling party's billing number by a local exchange carrier for billing or routing purposes, and to the subsequent delivery of such number to end users. Under the Commission's rules, with certain limited exceptions,

common carriers using SS7 and offering or subscribing to any service based on SS7 functionality are required to transmit the CPN associated with an interstate call to connecting carriers. *See* 47 CFR 64.1600, 64.1601. Regardless of whether SS7 is available, a LEC at the originating end of a call must receive and be able to transmit the ANI to the connecting carrier, as the ANI is the number transmitted through the network that identifies the calling party for billing purposes. The term ''ANI'' refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery to end users. *See* 47 CFR 64.1600(b). ANI is generally inferred by the switch. Each line termination on the telco switch corresponds to a different phone number for ANI. Thus, we determine that telemarketers must ensure that either CPN or ANI is made available for all telemarketing calls in order to satisfy their caller ID requirements. Whenever possible, CPN is the preferred number and should be transmitted. Provision of Caller ID information does not obviate the requirement for a caller to verbally supply identification information during a call. *See* 47 CFR 64.1200(e)(iv). Consistent with the FTC's rules, CPN can include any number associated with the telemarketer or party on whose behalf the call is made, that allows the consumer to identify the caller. This includes a number assigned to the telemarketer by its carrier, the specific number from which a sales representative placed a call, the number for the party on whose behalf the telemarketer is making the call, or the seller's customer service number. Any number supplied must permit an individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.[3]

126. Some commenters state that it is not technically feasible for telemarketers to transmit caller ID information when using a private branch exchange (PBX) and typical T–1 trunks. As noted by National Association of State Utility Consumer Advocates, the Commission's rules exempt from the current caller ID rules, PBX and Centrex systems which lack the capability to pass CPN information. Regardless of whether a call is made using a typical T–1 trunk or an ISDN trunk, ANI is transmitted to the Local Exchange Carrier for billing purposes. With both PBX and Centrex systems, the carrier can determine the billing number from the physical line being used to make a call, even if the billing number is not transmitted along that line to the carrier. We are cognizant of the fact that with PBX and Centrex systems, the billing number could be associated with multiple outgoing lines. Nevertheless, telemarketers using PBX or Centrex systems are required under the new rules not to block ANI, at a minimum, for caller ID purposes.

127. We recognize that ISDN technology is preferred, as it presents the opportunity to transmit both CPN and ANI. However, in situations where existing technology permits only the transmission of the ANI or charge number, then the ANI or charge number will satisfy the Commission's rules, provided it allows a consumer to make a do-not-call request during regular business hours. By allowing transmission of ANI or charge number to satisfy the caller ID requirement, we believe that carriers need not incur significant costs to upgrade T–1 and ISDN switches. For these same reasons, we also believe that mandating caller ID will not create a competitive advantage towards particular carriers. As typical T–1 technology is upgraded to ISDN technology, we expect that telemarketers will increasingly be able to transmit the preferred CPN instead of ANI or charge number.

128. Finally, the record strongly supports a prohibition on blocking caller ID information. Both National Consumers League and National Association of State Utility Consumer Advocates state that there is no valid reason why a telemarketer should be allowed to intentionally block the transmission of caller ID. We conclude that the caller ID requirements for commercial telephone solicitation calls do not implicate the privacy concerns associated with blocking capability for individuals. *See* 47 CFR 64.1601(b). We recognize that absent a prohibition on blocking, a party could transmit CPN in accordance with the new rules and simultaneously transmit a request to block transmission of caller ID information. Thus, the Commission has determined to prohibit any request by a telemarketer to block caller ID information or ANI.

129. The TCPA seeks primarily to protect subscribers from unrestricted commercial telemarketing calls. Therefore, the Commission has determined not to extend the caller ID requirements to tax-exempt nonprofit organizations. However, the caller ID rules will apply to all other companies engaged in telemarketing, and the existence of an established business relationship between the telemarketer and the consumer shall not be an exception to these rules. For all covered entities, the effective date of the caller ID requirements will be January 29, 2004. This will provide telemarketers a reasonable period of time to obtain or update any equipment or systems to enable them to transmit caller ID information. We decline to extend the effective date beyond January 29, 2004, which is consistent with the date on which telemarketers are required to comply with the FTC's caller ID provision.

Unsolicited Facsimile Advertisements

Prior Express Invitation or Permission

130. The Commission has determined that the TCPA requires a person or entity to obtain the prior express invitation or permission of the recipient before transmitting an unsolicited fax advertisement. This *express* invitation or permission must be in writing and include the recipient's signature. The term ''signature'' in the amended rule shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law. The recipient must clearly indicate that he or she consents to receiving such faxed advertisements from the company to which permission is given, and provide the individual or business's fax number to which faxes may be sent.

131. *Established Business Relationship.* The TCPA does not act as a total ban on fax advertising. Persons and businesses that wish to advertise using faxes may, under the TCPA, do so with the express permission of the recipients. In the 2002 Notice, we sought comment on whether an established business relationship between a fax sender and recipient establishes the requisite consent to receive telephone facsimile advertisements. The majority of industry commenters support the finding that facsimile transmissions from persons or entities that have an established business relationship with the recipient can be deemed to be invited or permitted by the recipient. These commenters maintain that

[3] This would mean 9 a.m.–5 p.m. Monday through Friday. A seller or telemarketer calling on behalf of a seller must be able to record do-not-call requests at the number transmitted to consumers as caller ID. Therefore, if the person answering the calls at this number is not the sales representative who made the call or an employee of the seller or telemarketer who made the call, or if the telemarketer is using an automated system to answer the calls, the seller is nevertheless responsible for ensuring that any do-not-call request is recorded and the consumer's name, if provided, and telephone number are placed on the seller's do-not-call list at the time the request is made.

eliminating the EBR exemption for facsimile advertisements would interfere with ongoing business relationships, raise business costs, and limit the flow of valuable information to consumers. They urge the Commission to amend the rules to provide expressly for the EBR exemption. Conversely, the majority of consumer advocates argue that the TCPA requires companies to obtain express permission from consumers—even their existing customers—before transmitting a fax to a consumer. Some consumer advocates maintain that the Commission erred in its 1992 determination that a consumer, by virtue of an established business relationship, has given his or her express invitation or permission to receive faxes from that company. They urge the Commission to eliminate the EBR exemption, noting that Congress initially included in the TCPA an EBR exemption for faxes, but removed it from the final version of the statute.

132. We now reverse our prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers. As of the effective date of these rules, the EBR will no longer be sufficient to show that an individual or business has given their express permission to receive unsolicited facsimile advertisements. The record in this proceeding reveals consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Recipients of these faxed advertisements assume the cost of the paper used, the cost associated with the use of the facsimile machine, and the costs associated with the time spent receiving a facsimile advertisement during which the machine cannot be used by its owner to send or receive other facsimile transmissions.

133. The legislative history indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Certain practices were treated differently because they impose costs on consumers. For example, under the TCPA, calls to wireless phones and numbers for which the called party is charged are prohibited in the absence of an emergency or without the prior express consent of the called party. *See* 47 U.S.C. 227(b)(1). Because of the cost shifting involved with fax advertising, Congress similarly prohibited unsolicited faxes without the prior express permission of the recipient. 47 U.S.C. 227(b)(1)(C) and (a)(4). Unlike the do-not-call list for telemarketing calls, Congress provided no mechanism for opting out of unwanted facsimile advertisements. Such an opt-out list would require the recipient to possibly bear the cost of the initial facsimile and inappropriately place the burden on the recipient to contact the sender and request inclusion on a ''do-not-fax'' list.

134. Instead, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. *See* 47 U.S.C. 227(b)(1)(C) and (a)(4). Advertisers may obtain consent for their faxes through such means as direct mail, Web sites, and interaction with customers in their stores. Under the new rules, the permission to send fax advertisements must be provided in writing, include the recipient's signature and facsimile number, and cannot be in the form of a ''negative option.'' A facsimile advertisement containing a telephone number and an instruction to call if the recipient no longer wishes to receive such faxes, would constitute a ''negative option.'' This option (in which the sender presumes consent unless advised otherwise) would impose costs on facsimile recipients unless or until the recipient were able to ask that such transmissions be stopped. For example, a company that requests a fax number on an application form could include a clear statement indicating that, by providing such fax number, the individual or business agrees to receive facsimile advertisements from that company. Such statement, if accompanied by the recipient's signature, will constitute the necessary prior express permission to send facsimile advertisements to that individual or business. We believe that even small businesses may easily obtain permission from existing customers who agree to receive faxed advertising, when customers patronize their stores or provide their contact information. The Commission believes that given the cost shifting and interference caused by unsolicited faxes, the interest in protecting those who would otherwise be forced to bear the burdens of unwanted faxes outweighs the interests of companies that wish to advertise via fax.

135. *Membership in a Trade Association.* In its 1995 *Reconsideration Order*, the Commission determined that mere distribution or publication of a telephone facsimile number is not the equivalent of prior express permission to receive faxed advertisements. The Commission also found that given the variety of circumstances in which such numbers may be distributed (business cards, advertisements, directory listings, trade journals, or by membership in an association), it was appropriate to treat the issue of consent in any complaint regarding unsolicited facsimile advertisements on a case-by-case basis. In the 2002 Notice, we sought comment specifically on the issue of membership in a trade association or similar group and asked whether publication of one's fax number in an organization's directory constitutes an invitation or permission to receive an unsolicited fax. The American Business Media argued that those willing to make fax numbers available in directories released to the public do so with an expectation that such fax numbers will be used for advertising. Consumer advocates, however, contend that publicly listing a fax number is not a broad invitation to send commercial faxes. TOPUC asserted that businesses often publish their fax numbers for the convenience of their customers, clients and other trade association members, not for the benefit of telemarketers.

136. The Commission agrees that fax numbers are published and distributed for a variety of reasons, all of which are usually connected to the fax machine owner's business or other personal and private interests. The record shows that they are not distributed for other companies' advertising purposes. Thus, a company wishing to fax ads to consumers whose numbers are listed in a trade publication or directory must first obtain the express permission of those consumers. Express permission to receive a faxed ad requires that the consumer understand that by providing a fax number, he or she is agreeing to receive faxed advertisements. We believe the burden on companies to obtain express permission is warranted when balanced against the need to protect consumers and businesses from bearing the advertising costs of those companies. Finally, the Commission affirms that facsimile requests for permission to transmit faxed ads, including toll-free opt-out numbers, impose unacceptable costs on the recipients. This kind of ''negative option'' is contrary to the statutory requirement for prior express permission or invitation.

Fax Broadcasters

137. The Commission explained in the 2002 Notice that some fax broadcasters, who transmit other entities' advertisements to a large number of telephone facsimile machines for a fee, maintain lists of facsimile numbers that they use to direct their clients' advertisements. We noted that this practice, among others, indicates a fax broadcaster's close involvement in sending unlawful fax advertisements

and may subject such entities to enforcement action under the TCPA and our existing rules. We then sought comment on whether the Commission should address specifically in the rules the activities of fax broadcasters. Companies and organizations whose members hire fax broadcasters to transmit their messages argue that the fax broadcaster should be liable for violations of the TCPA's faxing prohibition. American International Automobile Dealers Association maintains this should be the case, even if the fax broadcaster uses the list of fax numbers provided by the company doing the advertising. Nextel argues that liability ought to lie with the party controlling the destination of the fax; that fax broadcasters who actively compile and market databases of fax numbers are the major perpetrators of TCPA fax violations. Nextel specifically urges the Commission to find that companies whose products are advertised by independent retailers should not be liable for TCPA violations when they have no knowledge of such activities. Fax broadcasters disagree that they should be liable for unlawful faxes, maintaining that many of them do not exercise any editorial control or discretion over the content of the messages, and do not provide the list of fax numbers to which the ads are transmitted. Many industry as well as consumer commenters agree that only those fax broadcasters who are closely involved in the transmission of the fax should be subject to liability. Reed asserts that liability should rest with the entity on whose behalf a fax is sent; that fax broadcasters are not in a position to know firsthand whether, for example, an established business relationship exists between the company and consumer.

138. The Commission's rulings clearly indicate that a fax broadcaster's exemption from liability is based on the type of activities it undertakes, and only exists ''[i]n the absence of 'a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions.''' *1992 TCPA Order*, 7 FCC Rcd at 8780, para. 54 (quoting *Use of Common Carriers*, 2 FCC Rcd 2819, 2820 (1987)). The Commission believes that, based on the record and our own enforcement experience, addressing the activities of fax broadcasters will better inform both consumers and businesses about the prohibition on unsolicited fax advertising. The Commission has determined to amend the rules to state explicitly that a fax broadcaster will be liable for an unsolicited fax if there is a high degree of involvement or actual notice on the part of the broadcaster. The new rules provide that if the fax broadcaster supplies the fax numbers used to transmit the advertisement, the fax broadcaster will be liable for any unsolicited advertisement faxed to consumers and businesses without their prior express invitation or permission. We agree, however, that if the company whose products are advertised has supplied the list of fax numbers, that company is in the best position to ensure that recipients have consented to receive the faxes and should be liable for violations of the prohibition. Therefore, the fax broadcaster will not be responsible for the ads, in the absence of any other close involvement, such as determining the content of the faxed message. A high degree of involvement might be demonstrated by a fax broadcaster's role in reviewing and assessing the content of a facsimile message. In such circumstances where both the fax broadcaster and advertiser demonstrate a high degree of involvement, they may be held jointly and severally liable for violations of the unsolicited facsimile provisions. In adopting this rule, the Commission focuses on the nature of an entity's activity rather than on any label that the entity may claim. We believe the rule will better inform the business community about the prohibition on unsolicited fax advertising and the liability that attaches to such faxing. And, it will better serve consumers who are often confused about which party is responsible for unlawful fax advertising. For the same reasons, the new rules define ''facsimile broadcaster'' to mean a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee. *See* 47 CFR 64.1200(f)(4).

139. Some commenters ask the Commission to clarify the extent of common carriers' liability for the transmission of unsolicited faxes. Cox specifically urges the Commission to distinguish the obligations of fax broadcasters from ''traditional common carriers.'' As noted above, the Commission has stated that ''[i]n the absence of 'a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions,' common carriers will not be held liable for the transmission of a prohibited facsimile message.'' *1992 TCPA Order*, 7 FCC Rcd at 8780, para. 54 (quoting *Use of Common Carriers*, 2 FCC Rcd 2819, 2820 (1987)). We reiterate here that if a common carrier is merely providing the network over which a subscriber (a fax broadcaster or other individual, business, or entity) sends an unsolicited facsimile message, that common carrier will not be liable for the facsimile.

140. Nextel urges the Commission to clarify that section 217 of the Communications Act does not impose a higher level of liability on common carriers than on other entities for violations of the TCPA. Section 217 provides that ''[i]n construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.'' 47 U.S.C. 217. The Commission declines to address the scope of section 217 in this rulemaking, which was not raised in the 2002 Notice or in subsequent notices in this proceeding.

Fax Servers

141. The TCPA makes it unlawful for any person to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine. 47 U.S.C. 227(b)(1)(C). The TCPA defines the term ''telephone facsimile machine'' to mean ''equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.'' 47 U.S.C. 227(a)(2). The Commission sought comment on any developing technologies, such as computerized fax servers, that might warrant revisiting these rules.

142. Commenters who addressed this issue were divided on whether fax servers should be subject to the unsolicited facsimile provisions. Some industry representatives urged the Commission to clarify that the TCPA does not prohibit the transmission of unsolicited fax advertisements to fax servers and personal computers because these transmissions are not sent to a ''telephone facsimile machine,'' as defined in the statute. Nextel maintains that such faxes do not implicate the harms Congress sought to redress in the TCPA, as they are not reduced to paper and can be deleted from one's inbox without being opened or examined. Other commenters disagree, noting that there are other costs associated with faxes sent to computers and fax servers. They note that the TPCA only requires

that the equipment have the capacity to transcribe text or messages onto paper, and that computer fax servers and personal computers have that capacity.

143. We conclude that faxes sent to personal computers equipped with, or attached to, modems and to computerized fax servers are subject to the TCPA's prohibition on unsolicited faxes. However, we clarify that the prohibition does not extend to facsimile messages sent as email over the Internet. The record confirms that a conventional stand-alone telephone facsimile machine is just one device used for this purpose; that developing technologies permit one to send and receive facsimile messages in a myriad of ways. Today, a modem attached to a personal computer allows one to transmit and receive electronic documents as faxes. ''Fax servers'' enable multiple desktops to send and receive faxes from the same or shared telephony lines.

144. The TCPA's definition of ''telephone facsimile machine'' broadly applies to any equipment that has the capacity to send or receive text or images. The purpose of the requirement that a ''telephone facsimile machine'' have the ''capacity to transcribe text or images'' is to ensure that the prohibition on unsolicited faxing not be circumvented. Congress could not have intended to allow easy circumvention of its prohibition when faxes are (intentionally or not) transmitted to personal computers and fax servers, rather than to traditional stand-alone facsimile machines. As the House Report accompanying the TCPA explained, ''facsimile machines are designed to accept, process and print all messages which arrive over their dedicated lines. The fax advertiser takes advantage of this basic design by sending advertisements to available fax numbers, knowing that it will be received and printed by the recipient's machine.'' H.R. Rep. No. 102–317 at 10 (1991). However, Congress also took account of the ''interference, interruptions, and expense'' resulting from junk faxes, emphasizing in the same Report that ''[i]n addition to the costs associated with the fax advertisements, when a facsimile machine is receiving a fax, it may require several minutes or more to process and print the advertisement. During that time, the fax machine is unable to process actual business communications. H.R. Rep. No. 102–317 at 25 (1991).''

145. Facsimile messages sent to a computer or fax server may shift the advertising costs of paper and toner to the recipient, if they are printed. They may also tie up lines and printers so that the recipients' requested faxes are not timely received. Such faxes may increase labor costs for businesses, whose employees must monitor faxes to determine which ones are junk faxes and which are related to their company's business. Finally, because a sender of a facsimile message has no way to determine whether it is being sent to a number associated with a stand-alone fax machine or to one associated with a personal computer or fax server, it would make little sense to apply different rules based on the device that ultimately received it.

Identification Requirements

146. The TCPA and Commission rules require that any message sent via a telephone facsimile machine contain the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. 47 U.S.C. 227(d)(1)(B); 47 CFR 68.318(d). In the 2002 Notice, the Commission asked whether these rules have been effective at protecting consumers' rights to enforce the TCPA. The Commission determined in its *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* CC Docket No. 92–90, Order on Further Reconsideration, 12 FCC Rcd 4609, 4613, para. 6 (1997) (*1997 TCPA Reconsideration Order*) that a facsimile broadcast service must ensure that the identifying information of the entity on whose behalf the provider sent messages appear on facsimile messages. In its discussion, the Commission clarified that the sender of a facsimile message is the creator of the content of the message, finding that Section 227(d)(1) of the TCPA mandates that a facsimile include the identification of the business, other entity, or individual creating or originating a facsimile message, and not the entity that transmits the message. The Commission believes that if a fax broadcaster is responsible for the content of the message or for determining the destination of the message (*i.e.*, supplying the list of facsimile numbers to which the faxes are sent), it should be identified on the facsimile, along with the entity whose products are advertised. Therefore, we amend the rules to require any fax broadcaster that demonstrates a high degree of involvement in the transmission of such facsimile message to be identified on the facsimile, along with the identification of the sender. This will permit consumers to hold fax broadcasters accountable for unlawful fax advertisements when there is a high degree of involvement on the part of the fax broadcaster. Commenters suggested the Commission clarify what constitutes an adequate identification header. Consistent with our amended identification rules for telemarketing calls, senders of fax advertisements will be required under the new rules to use the name under which they are officially registered to conduct business. Use of a ''d/b/a'' (''doing business as'') or other more widely recognized name is permissible; however, the official identification of the business, as filed with state corporate registration offices or comparable regulatory entities, must be included, at a minimum.

Private Right of Action

147. The Commission declines to make any determination about the specific contours of the TCPA's private right of action. Congress provided consumers with a private right of action, ''if otherwise permitted by the laws or rules of court of a State.'' 47 U.S.C. 227(c)(5). This language suggests that Congress contemplated that such legal action was a matter for consumers to pursue in appropriate state courts, subject to those courts' rules. The Commission believes it is for Congress, not the Commission, to either clarify or limit this right of action.

Informal Complaint Rules

148. In the 2002 Notice, the Commission noted that it had released another Notice of Proposed Rulemaking in February of 2002, seeking comment on whether to extend the informal complaint rules to entities other than common carriers. We sought comment in this proceeding on whether the Commission should amend these informal complaint rules to apply to telemarketers. We will review this issue as part of the Informal Complaints proceeding. All comments filed in this proceeding that address the applicability of the informal complaint rules to telemarketers will be incorporated into CI Docket No. 02–32.

Time of Day Restrictions

149. Commission rules restrict telephone solicitations between the hours of 8 a.m. and 9 p.m. local time at the called party's location. 47 CFR 64.1200(e)(1). As part of our review of the TCPA rules, we sought comment on how effective these time restrictions have been at limiting objectionable solicitation calls. The Commission also asked whether more restrictive calling times could work in conjunction with a national registry to better protect

consumers from telephone solicitations to which they object.

150. Industry members that commented on the calling time restrictions unanimously asserted that the current calling times should be retained. Some explained that any restrictions on calls made during the early evening hours, in particular, would interfere with telemarketers' ability to reach their customers. Consumers, on the other hand, urged the Commission to adopt tighter restrictions on the times that telemarketers may call them. Some object to calls at the end of the day and during the dinner hour; others prefer that telemarketers not be able to begin calling until later in the morning. Some suggest the calling times should parallel local noise ordinances. EPIC advocated allowing consumers to specify the hours they wish to receive calls.

151. The Commission declines to revise the restrictions on calling times. Instead, we retain the current calling times, which are consistent with the FTC's rules. We believe the current calling times strike the appropriate balance between protecting consumer privacy and not unduly burdening industry in their efforts to conduct legitimate telemarketing. We also believe that Commission rules that diverge from the FTC's calling restrictions will lead to confusion for consumers. Moreover, consumers who want to block unwanted calls during certain times will now have the option of placing their telephone numbers on the national do-not-call registry. They will have the additional option of giving express verifiable authorization to only those companies from which they wish to hear. The Commission declines at this time to require companies to adhere to consumers' calling preferences, including ''acceptable'' calling times. The Commission encourages any seller or telemarketer to comply with consumers' requests not to be called during certain times of the day. We believe that the costs of monitoring calling times for individual consumers could be substantial for many companies, particularly small businesses.

Enforcement Priorities

152. TCPA enforcement has been a Commission priority over the past several years, and we intend that it remain so. In guiding our future enforcement plans, we recognize that the FTC's recent rule changes expand that agency's regulation of telemarketing activities and require coordination to ensure consistent and non-redundant federal enforcement in this area. Most notably, the FTC's adoption of a nationwide do-not-call registry, the related Do-Not-Call Act, and finally our adoption of requirements that maximize consistency with those adopted by the FTC create an overlap in federal regulations governing major telemarketing activities. There are other overlapping regulations such as provisions governing abandoned calls, transmission of caller ID, and time-of-day restrictions. We hereby direct Commission staff to negotiate with FTC staff a Memorandum of Understanding between the respective staffs to achieve an efficient and effective enforcement strategy that will promote compliance with federal telemarketing regulations.

153. The FCC's jurisdiction over telemarketing is significantly broader than the FTC's. First, as noted above, the FTC does not have authority over telemarketing calls made by in-house employees of common carriers, banks, credit unions, savings and loans, insurance companies, and airlines. In addition, the FTC's telemarketing rules pertain only to interstate transmissions. In contrast, the FCC's telemarketing rules apply without exception to any entity engaged in any of the telemarketing activities targeted by the TCPA and the Commission's related rules, including those that involve purely intrastate activities. 47 U.S.C. 152(b). Given the substantial gaps in the FTC's authority over the full range of telemarketing activities, we contemplate that our enforcement staff will focus particularly on those activities and entities that fall outside the FTC's reach—airlines, banks, credit unions, savings and loans, insurance companies, and common carriers, as well as intrastate transmissions by any entity.

154. Nevertheless, we do not contemplate Commission enforcement that targets only those activities, entities, or transmissions that are outside the FTC's jurisdiction. The TCPA creates a statutory expectation for FCC enforcement in the telemarketing area. See 47 U.S.C. 227(f)(3), (7). Moreover, the TCPA's detailed standards pertaining to do-not-call matters evince Congressional intent that the FCC assume a prominent role in federal regulation of this aspect of telemarketing, a mandate that is not altered by the Do-Not-Call Act. Accordingly, even with the FTC's new do-not-call regulations, including its administration of a national do-not-call registry, we emphasize that the Commission must stand ready to enforce each of our telemarketing rules in appropriate cases. For reasons of efficiency and fairness, our staff will work closely with the FTC to avoid unnecessarily duplicative enforcement actions.

155. In determining enforcement priorities under the new telemarketing rules, we contemplate that the Enforcement Bureau will continue its policy of reviewing FCC and FTC consumer complaint data and conferring with appropriate state and federal agencies to detect both egregious violations and patterns of violations, and will act accordingly. The Enforcement Bureau has in place effective procedures to review aggregate complaint information to determine the general areas that merit enforcement actions, and to identify both particular violators and the individual consumers who may be able to assist the staff in pursuing enforcement actions against such violators. Enforcement action could include, for example, forfeiture proceedings under section 503(b),[4] cease and desist proceedings under section 312(c), injunctions under section 401, and revocation of common carrier section 214 operating authority.

Other Issues

Access to TCPA Inquiries and Complaints

156. The Commission stated that the 2002 Notice was ''prompted, in part, by the increasing number and variety of inquiries and complaints involving our rules on telemarketing and unsolicited fax advertisements.'' A few commenters maintain that the Commission should not consider final rules until parties have had an opportunity to analyze the consumer complaints referenced in the 2002 Notice. Other commenters contend that the number of complaints received by the Commission does not necessarily demonstrate a problem that demands government intervention. The ATA filed a Freedom of Information Act (FOIA) request with the Commission on October 16, 2002, seeking access to the TCPA-related informal complaints. The FOIA generally provides that any person has a right to obtain access to federal agency records, subject to enumerated exemptions from disclosure. The FOIA requirements do not apply to records that contain ''personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'' *See* 5 U.S.C. 552(b)(6). Many of the complaints sought by the ATA contain personal private information. In addition, the complaints are part of a

[4] Before initiating a forfeiture proceeding against most entities that do not hold an FCC authorization, the violator must have received a Commission citation and then engaged in an additional violation. 47 U.S.C. 503(b)(5).

system of records subject to the Privacy Act. 5 U.S.C. 552(a); 47 CFR 0.551 *et seq.* For these reasons, the Commission agreed to release the complaints on a rolling basis only after personal information was redacted. In response to ATA's FOIA request, the Commission has thus far provided approximately 2,420 redacted complaints.

157. We agree with commenters that the increasing number of inquiries and complaints about telemarketing practices should not form the basis upon which we revise or adopt new rules under the TCPA. Rather, such information can be considered in determining whether to seek comment on the effectiveness of any of its rules. Other considerations included: the Commission's own enforcement experience; the amount of time that had passed since the Commission undertook a broad review of the TCPA rules, during which time telemarketing practices have changed significantly; and the actions by the FTC to consider changes to its telemarketing rules, including the establishment of a national do-not-call registry. We note that, even in the absence of any such complaints, the Commission is required by the Do-Not-Call Act to complete the TCPA rulemaking commenced last year. We disagree with commenters who suggest that parties must have access to all of the complaints referenced in the NPRM in order to be able to have a meaningful opportunity to participate in this proceeding. It is not the existence of the complaints, or the number of complaints, that led the Commission to institute this proceeding to consider revision of its TCPA rules. Rather, our TCPA rules have been in place for more than ten years. We opened this proceeding to determine ''whether the Commission's rules need to be revised in order to more effectively carry out Congress's directives in the TCPA.'' 2002 Notice, 17 FCC Rcd at 17461, para. 1. In any event, since September 2002, consumers, industry, and state governments have filed over 6,000 comments in this proceeding, during which time the Commission extended the comment periods twice and released an FNPRM in order to ensure that parties had ample opportunity to comment on possible FCC action. The substantial record compiled in this proceeding, along with the Commission's own enforcement experience, provides the basis for the actions we take here today.

Reports to Congress

158. The Do-Not-Call Act requires the Commission to transmit reports to Congress within 45 days after the promulgation of final rules in this proceeding, and annually thereafter. By this Order, the Commission delegates its authority to the Chief, Consumer & Governmental Affairs Bureau, to issue all such reports.

Procedural Issues

Final Regulatory Flexibility Analysis

159. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603,[5] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 2002 Notice released by the Commission on September 18, 2002. The Commission sought written public comments on the proposals contained in the 2002 Notice, including comments on the IRFA. On March 25, 2003, the Commission released the FNPRM, seeking comments on the requirements contained in the Do-Not-Call Act which was signed into law on March 11, 2003. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

A. Need for, and Objectives of, the Order

160. Since 1992, when the Commission adopted rules pursuant to the TCPA, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make marketing using telephones and facsimile machines more cost-effective. At the same time, these new telemarketing techniques have heightened public concern about the effect telemarketing has on consumer privacy. A growing number of states have passed, or are considering, legislation to establish statewide do-not-call lists, and the FTC has decided to establish a national do-not-call registry. Congress provided in the TCPA that ''individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.'' *See TCPA*, Section 2(9), *reprinted* in 7 FCC Rcd 2736 at 2744.

161. The 2002 Notice sought comments on whether to revise or clarify Commission rules governing unwanted telephone solicitations, the use of automatic telephone dialing systems, prerecorded or artificial voice messages, telephone facsimile machines, the effectiveness of company-specific do-not-call lists, and the appropriateness of establishing a national do-not-call list. In addition, in the IRFA, the Commission sought comments on the effect the proposed policies and rules would have on small business entities.

162. In this Order the Commission revises the current TCPA rules and adopts new rules to provide consumers with additional options for avoiding unwanted telephone solicitations. We establish a national do-not-call registry for consumers who wish to avoid most unwanted telemarketing calls. This national do-not-call registry will supplement the current company-specific do-not-call rules, which will continue to permit consumers to request that particular companies not call them. The Commission also adopts a new provision to permit consumers registered with the national do-not-call list to provide permission to call to specific companies by an express written agreement. The TCPA rules exempt from the ''do-not-call'' requirements nonprofit organizations and companies with whom consumers have an established business relationship. The definition of ''established business relationship'' has been amended so that it is limited to 18 months from any purchase or financial transaction with the company and to three months from any inquiry or application from the consumer. Any company that is asked by a consumer, including an existing customer, not to call again must honor that request for five years. We retain the current calling time restrictions of 8 a.m. until 9 p.m.

163. To address the use of predictive dialers, we have determined that a telemarketer must abandon no more than three percent of calls answered by a person, must deliver a prerecorded identification message when abandoning a call, and must allow the telephone to ring for 15 seconds or four rings before disconnecting an unanswered call. The new rules also require all companies conducting telemarketing to transmit caller identification information when available, and they prohibit companies from blocking such information. The Commission has revised its earlier determination that an established business relationship constitutes express invitation or permission to receive an unsolicited facsimile advertisement. We find that the

[5] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

permission to send fax ads must be in writing, include the recipient's signature, and clearly indicate the recipient's consent to receive such ads. In addition, we have clarified when fax broadcasters are liable for the transmission of unlawful fax advertisements.

164. We believe the rules the Commission adopts in the Order strike an appropriate balance between maximizing consumer privacy protections and avoiding imposing undue burdens on telemarketers. In addition, the Commission must comply with the Do-Not-Call Act, which requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation. This report is to include: (1) An analysis of the effectiveness of the registry; (2) the number of consumers included on the registry; (3) the number of persons accessing the registry and the fees collected for such access; (4) a description of coordination with state do-not-call registries; and, lastly, (5) a description of coordination of the registry with the Commission's enforcement efforts.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

165. There were no comments filed in direct response to the IRFA. Some commenters, however, raised issues and questions about the impact the proposed rules and policies would have on small entities. Telemarketers maintained that ''telemarketing is used to introduce consumers to novel and competitive products and services,'' often offered by small businesses. Some commenters insisted that business-to-business telemarketing is essential for small businesses. They indicated that they rely on fax broadcasting as a cost-effective form of advertising. On the other hand, other small businesses have requested that the Commission allow their telephone numbers to be included on any national do-not-call list and urged the Commission to adopt rules protecting them from unsolicited faxes. The rules adopted herein reflect not only the difficult balancing of individuals' privacy rights against the protections afforded commercial speech, but the difficult balancing of the interests of small businesses that rely on telemarketing against those that are harmed by unwanted telephone calls and facsimile transmissions. The amended rules should reduce burdens on both consumers and businesses, including small businesses.

166. *National Do-Not-Call List.* As discussed more extensively in the Order, some commenters opposed the adoption of a national do-not-call registry, stating that company-specific do-not-call lists adequately protect consumer privacy. Other commenters supported the establishment of a national do-not-call registry, arguing that ''further regulation is needed because the current system does little or nothing to protect privacy in the home.'' *See* Privacy Rights Clearinghouse (Privacy Rights) at 2. National Federation of Independent Business (NFIB) ''believes that significant burdens are being placed upon businesses of all sizes in order to comply with the regulations * * *, but that small businesses bear the brunt of those burdens.'' NFIB Comments at 1. NFIB suggested that women, minorities and small businesses will be affected disproportionately by any new restrictions. And, some commenters maintained that businesses, including small businesses, will suffer a reduction in telemarketing sales as a result of the establishment of a national do-not-call list. Small Business Survival Committee (SBSC), while opposed to a national do-not-call list, nevertheless offered a recommendation that would make such a list less onerous for small businesses. SBSC suggested exempting local calls that might result in a face-to-face transaction from the do-not-call list requirements. National Association of Insurance & Financial Advisors also encouraged exempting calls which result in face-to-face meetings and recommended an exemption for those businesses that make a *de minimis* number of calls.

167. The Commission received comments arguing that a national do-not-call list ''would be cumbersome'' and too expensive for small businesses to use. Direct Selling Association specifically indicated that a national do-not-call list would increase businesses' start-up costs if they were required to purchase the list. In addition, Mortgage Bankers Association of America (MBA) maintained that many small lenders use referrals from existing customers, not large lists, to attract new business. Such referrals, MBA suggested, will be difficult to scrub against a national do-not-call list. Some commenters suggested that an option to help reduce the cost of a national do-not-call list for small businesses would be to offer smaller pieces of the list to small businesses.

168. Yellow Pages Integrated Media Association urged the Commission to continue to exempt business-to-business calls from a national do-not-call list, because small businesses benefit tremendously by advertising in yellow pages and on-line. However, other commenters requested that small businesses be allowed to include their telephone numbers on the national do-not-call list. One small business commenter stated that ''* * * telemarketing * * * interferes with business operations, especially small business operations * * *.'' Mathemaesthetics, Inc. (Mathemaesthetics) Comments at 6. Another commenter argued that ''people that work from home * * * should not have to be bothered with telemarketing calls that would impact their job performance and potentially their ability to make a living.'' David T. Piekarski Comments (Docket No. 03–62) at 1–2. Finally, some have assured the Commission that a national do-not-call list would be manageable and feasible to maintain. NCS Pearson, Inc. (NCS), for example, maintained that even extremely small telemarketers could gain access to the do-not-call list at a reasonable cost using the Internet.

169. *Web site or Toll-Free Number to Access Company-Specific Lists and to Confirm Requests.* The Commission sought comment on whether to consider any modifications that would allow consumers greater flexibility to register on company-specific do-not-call lists. We specifically asked whether companies should be required to provide a toll-free number and/or Web site that consumers can access to register their names on do-not-call lists. Some commenters argued that it would be costly if small, local businesses were required to design and maintain Web sites or provide toll-free numbers for consumers to make do-not-call requests. In addition, they maintained that businesses should not be required to confirm registration of a consumer's name on a company's do-not-call list. Confirmations by mail, they stated, would be expensive for a business and probably perceived by the consumer as ''junk mail.''

170. *Established Business Relationship.* One issue raised by commenters as particularly burdensome for small business was monitoring existing business relationships and do-not-call requests. NFIB stated that members have found requests by existing customers to cease contacting them ''unwieldy and difficult * * * to translate as a business practice.'' NFIB Comments at 2. ''An individual who continues to interact with a [sic] these small businesses following a 'do not contact' request does not sever the business relationship *de facto* * * *''. NFIB Comments at 2. According to

NFIB, it should be the right of the business to continue to call that customer. They argued that it should be the responsibility of the customer to terminate the relationship with that business affirmatively.

171. National Automobile Dealers Association (NADA) indicated that there has been no significant change that would warrant a revision of the established business relationship exemption. In fact, NADA stated that ''narrowing the exemption would unnecessarily deprive small businesses of a cost-effective marketing opportunity.'' NADA Comments at 2. According to NADA, small businesses must maximize their marketing resources and the best way to do so is to direct their marketing efforts toward their existing customers.

172. While no commenter specifically addressed the effect of time limits on small businesses, several entities discussed time limits for the established business relationship rule in general. DMA indicated the difficulty in establishing a ''clock'' that ''will apply across all the industries that use the phone to relate to their customers.'' DMA Comments at 20. DMA continued by stating ''[d]ifferent business models require different periods of time.'' DMA Comments at 20. This concept was supported by Nextel, ''the FTC's eighteen-month limit on its EBR rule would be inappropriate for the telecommunications industry'' and would ''dramatically increase administrative burdens and costs for all businesses as they would be forced to monitor and record every customer inquiry and purchasing pattern to ensure compliance with the FCC's rules.'' Nextel Reply Comments 12–13.

173. *Unsolicited Facsimile Advertising and ''War Dialing''.* Privacy Rights commented that the practice of dialing large blocks of numbers to identify facsimile lines, *i.e.*, ''war dialing,'' should be prohibited, especially because such calls cannot be characterized as telemarketing. It argued that ''this practice is particularly troubling for small business owners who often work out of home offices'' because it deprives the small business owner of the use of the equipment, creates an annoyance and interrupts business calls. Privacy Rights Comments at 4–5.

174. NFIB advocated on behalf of its small business members that ''the ability to fax information to their established customers is an essential commercial tool.'' NFIB Comments at 3–4. Any customer who provides contact information when patronizing a business is providing express permission to be contacted by that business, including via facsimile advertising. In addition, NFIB indicated that businesses engaged in facsimile advertising should not be required to identify themselves, and that customers should be required to notify the business that they do not wish to receive such faxes. NADA agreed that the Commission should ''preserve its determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive fax advertisements.'' NADA Comments at 2. According to NADA, changing these rules would deprive small businesses of a marketing tool upon which they have come to rely.

175. Other commenters disagreed, explaining that numerous small businesses are burdened by the intrusion of ringing telephones and fax machines, the receipt of advertisements in which they are not interested, the depletion of toner and paper, and the time spent dealing with these unwanted faxes. A few home-based businesses and other companies maintain that facsimile advertisements interfere with the receipt of faxes connected to their own business, and that the time spent collecting and sorting these faxes increases their labor costs. In fact, NFIB has received complaints from its own members ''who * * * failed to realize that their membership *entitles* them to the receipt of such information via fax.'' NFIB Comments at 2 (emphasis added).

176. *Caller ID Requirements.* In response to the Commission's proposal to require telemarketers to transmit caller ID or prohibit the blocking of such information, NYSCPB favored prohibiting the intentional blocking of caller ID information, but acknowledged that requiring the transmission of caller ID may be inappropriate for smaller firms. NYSCPB stated that ''[w]hile mandatory transmission of caller ID information would undoubtedly facilitate do-not-call enforcement * * * we would not want to impose onerous burdens on smaller, less technically sophisticated firms * * *.'' NYSCPB-Other Than National DNC List Comments at 9. In addition, NYSCPB suggested that smaller businesses that lack the capability to transmit caller ID be exempt from providing caller ID information until the business installs new equipment with caller ID capabilities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

177. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

178. The Commission's rules on telephone solicitation and the use of autodialers, artificial or prerecorded messages and telephone facsimile machines apply to a wide range of entities, including all entities that use the telephone or facsimile machine to advertise. 47 CFR 64.1200. That is, our action affects the myriad of businesses throughout the nation that use telemarketing to advertise. For instance, funeral homes, mortgage brokers, automobile dealers, newspapers and telecommunications companies could all be affected. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities.

179. Nationwide, there are a total of 22.4 million small businesses, according to SBA data. And, as of 1992, nationwide there were approximately 275,801 small organizations [not-for-profit].

180. Again, we note that our action affects an exhaustive list of business types and varieties. We will mention with particularity the intermediary groups that engage in this activity. SBA has determined that ''telemarketing bureaus'' with $6 million or less in annual receipts qualify as small businesses. *See* 13 CFR 121.201, NAICS code 561422. For 1997, there were 1,727 firms in the ''telemarketing bureau'' category, total, which operated for the entire year. Of this total, 1,536 reported annual receipts of less than $5 million, and an additional 77 reported receipts of $5 million to $9,999,999. Therefore, the majority of such firms can be considered to be small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

181. The rules contained herein require significant recordkeeping

requirements on the part of businesses, including small business entities. First, while the national do-not-call list will be developed and maintained by the FTC, all businesses that engage in telemarketing will be responsible for obtaining the list of telephone numbers on the national do-not-call list and scrubbing their calling lists to avoid calling those numbers. They must also continue to be responsible for maintaining their own company-specific do-not-call lists; however, this is not a new requirement, but a continuation of the Commission's existing rules. The Commission has reduced the period of time that businesses must retain company-specific do-not-call requests from 10 years to five years. In addition, for those businesses, including small businesses, that wish to call consumers under the ''established business relationship'' exemption, they must continue to maintain customer lists in the normal course of business. Because of the time limits associated with this rule, businesses will need to monitor and record consumer contacts to assure that they are complying with the 18-month and three-month provisions in the rule. Businesses that want to call consumers with whom they have no relationship, but who are listed on the national do-not-call list, must obtain a consumer's express permission to call. This permission must be evidenced by a signed, written agreement.

182. Second, all businesses that use autodialers, including predictive dialers, to sell goods or services, will be required to maintain records documenting compliance with the call abandonment rules. Such records should demonstrate the telemarketers' compliance with a call abandonment rate of no less than three percent measured over a 30-day period, with the two-second-transfer rule, and with the ring duration requirement.

183. Third, with the exception of tax-exempt nonprofit organizations, all businesses that engage in telemarketing will be required to transmit caller ID information.

184. Fourth, businesses that advertise by fax will be required to maintain records demonstrating that recipients have provided express permission to send fax advertisements. Such permission must be given in writing, and businesses must document that they have obtained the required permission.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

185. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' 5 U.S.C. 603(c)(1) through (c)(4).

186. There were five specific areas in which the Commission considered alternatives for small businesses. These areas were: (1) Establishing a National Do-Not-Call List ((a) providing a portion of the national do-not-call list (five area codes) for free, (b) providing businesses with 30 days to process do-not-call requests, and (c) reducing the do-not-call record retention rate from 10 years to five years); (2) maintaining the current established business rule exemption and adopting the FTC's time limits of 18 months and three months; (3) establishing a call abandonment rate of three percent, rather than zero percent, and measuring the rate over a 30-day period, rather than on a per day basis; (4) continuing to prohibit facsimile advertising to residential and business numbers; and (5) declining to require businesses to maintain a Web site or toll-free number for do-not-call requests or confirmation of such requests by consumers. Small businesses presented arguments on both sides of each of these issues.

187. *National Do-Not-Call List.* This Order establishes a national do-not-call list for those residential telephone subscribers who wish to avoid most unwanted telephone solicitations. Although many businesses, including small businesses, objected to a national do-not-call registry, the Commission determined that a national do-not-call list was necessary to carry out the directives in the TCPA. We agreed with those commenters who maintained that the company-specific approach to concerns about unwanted telephone solicitations does not alone adequately protect individuals' privacy interests. We declined to exempt local solicitations and small businesses from the national do-not-call list. Given the numerous entities that solicit by telephone, and the technological tools that allow even small entities to make a significant number of solicitation calls, we believe that to do so would undermine the effectiveness of the national do-not-call rules in protecting consumer privacy. In addition, we declined to permit businesses to register their numbers on the national do-not-call registry, despite the requests of numerous small business owners to do so. The TCPA expressly contemplates that a national do-not-call database includes residential telephone subscribers' numbers. Although business numbers will not be included in the national do-not-call database, a business could nevertheless request that its number be added to a company's do-not-call list.

188. The Commission considered the costs to small businesses of purchasing the national do-not-call list. In an attempt to minimize the cost for small businesses, we have considered an alternative and determined that businesses will be allowed to obtain up to five area codes free of charge. Since many small businesses telemarket within a local area, providing five area codes at no cost should help to reduce or eliminate the costs of purchasing the national registry for small businesses. Furthermore, as suggested by NCS, small businesses should be able to gain access to the national list in an efficient, cost-effective manner via the Internet.

189. As discussed extensively in the Order, many businesses, including small business entities, requested specific exemptions from the requirements of a national do-not-call list. In order to minimize potential confusion for both consumers and businesses alike, we declined to create specific exemptions for small businesses. We believe the exemptions adopted for calls made to consumers with whom a seller has an established business relationship and those that have provided express agreement to be called provide businesses with a reasonable opportunity to conduct their business while protecting consumer privacy interests.

190. The Commission also considered modifying for small businesses the time frames for (1) processing consumers' do-not-call requests; (2) retaining consumer do-not-call records; and (3) scrubbing calling lists against the national do-not-call registry. In doing so, we recognized the limitations on small businesses of processing requests in a timely manner. Therefore, we determined to require that both large and small businesses must honor do-not-call requests within 30 days from the date such a request is made, instead of requiring that businesses honor requests in less time. Although some commenters suggested periods of up to 60 to 90 days to process do-not-call requests, we determined that such an inconsistency in the rules would lead to confusion for consumers.

Consumers might not easily recognize that the telemarketer calling represented a small business and that they must then allow a longer period of time for their do-not-call requests to be processed.

191. The Commission also determined to reduce the retention period of do-not-call records from 10 years to five years. This modification should benefit businesses that are concerned about telephone numbers that change hands over time. They argue that a shorter retention requirement will result in do-not-call lists that more accurately reflect those consumers who have requested not to be called. Finally, we considered allowing small businesses additional time to scrub their customer call lists against the national do-not-call database. The FTC's rules require telemarketers to scrub their lists every 90 days. For the sake of consistency, and to avoid confusion on the part of consumers and businesses, the Commission determined to require all businesses to access the national registry and scrub their calling lists of numbers in the registry every 90 days.

192. *Established Business Relationship.* We have modified the current definition of ''established business relationship'' so that it is limited in duration to 18 months from any purchase or transaction and three months from any inquiry or application. The revised definition is consistent with the definition adopted by the FTC. We concluded that regulating the duration of an established business relationship is necessary to minimize confusion and frustration for consumers who receive calls from companies they have not contacted or patronized for many years. There was little consensus among industry members about how long an established business relationship should last following a transaction between the consumer and seller. We believe the 18-month timeframe strikes an appropriate balance between industry practices and consumer privacy interests. Although businesses, including small businesses must monitor the length of relationships with their customers to determine whether they can lawfully call a customer, we believe that a rule consistent with the FTC's will benefit businesses by creating one uniform standard with which businesses must comply.

193. *Call Abandonment.* In the 2002 Notice, the Commission requested information on the use of predictive dialers and the harms that result when predictive dialers abandon calls. In response, some small businesses urged the Commission to adopt a maximum rate of zero on abandoned calls. They described their frustration over hang-up calls that interrupt their work and with answering the phone ''only to find complete silence on the other end.'' Mathemaesthetics Comments at 6. Most industry members encouraged the Commission to adopt an abandonment rate of no less than five percent, claiming that this rate ''minimizes abandoned calls, while still allowing for the substantial benefits achieved by predictive dialers.'' WorldCom Reply at 18–19. The Commission has determined that a three percent maximum rate on abandoned calls balances the interests of businesses that derive economic benefits from predictive dialers and consumers who find intrusive those calls delivered by predictive dialers. We believe that this alternative, a rate of three percent, will also benefit small businesses that are affected by interruptions from hang-ups and ''dead air'' calls.

194. The three percent rate will be measured over a 30-day period, rather than on a per day basis. Industry members maintained that a per day measurement would not account for short-term fluctuations in marketing campaigns and may be overly burdensome to smaller telemarketers. We believe that measuring the three percent rate over a longer period of time will still reduce the overall number of abandoned calls, yet permit telemarketers to manage individual calling campaigns effectively. It will also permit telemarketers to more easily comply with the recordkeeping requirements associated with the use of predictive dialers.

195. *Unsolicited Facsimile Advertising.* The record reveals that facsimile advertising can both benefit and harm small businesses with limited resources. The small businesses and organizations that rely upon faxing as a cost-effective way to advertise insist that the Commission allow facsimile advertising to continue. Other small businesses contend that facsimile advertising interferes with their daily operations, increases labor costs, and wastes resources such as paper and toner. The Commission has reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers. Under the amended rules, a business may advertise by fax with the prior express permission of the fax recipient, which must be in writing. Businesses may obtain such written permission through direct mail, Web sites, or during interaction with customers in their stores. This alternative will benefit those small businesses, which are inundated with unwanted fax advertisements.

196. *Web site or Toll-Free Number to Access Company-Specific Lists and to Confirm Requests.* Lastly, the Commission has determined not to require businesses to provide a Web site or toll-free number for consumers to request placement on company-specific do-not-call lists or to respond affirmatively to do-not-call requests or otherwise provide some means of confirmation that consumers have been added to a company's do-not-call list. Several commenters indicated that such requirements would be costly to small businesses. Although we believe these measures would improve the ability of consumers to register do-not-call requests, we agree that such requirements would be potentially costly to businesses, particularly small businesses. Instead, we believe that the national do-not-call registry will provide consumers with a viable alternative if they are concerned that their company-specific do-not-call requests are not being honored. In addition, consumers may pursue a private right of action if there is a violation of the do-not-call rules. This alternative should reduce, for small businesses who engage in telemarketing, both the potential cost and resource burdens of maintaining company-specific lists.

197. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

198. Accordingly, pursuant to the authority contained in Sections 1–4, 222, 227, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 222 and 227; and 47 CFR 64.1200 of the Commission's rules, and the Do-Not-Call Implementation Act, Public Law 108–10, 117 Stat. 557, the Report and Order in CG Docket No. 02–278 IS ADOPTED, and Parts 64 and 68 of the Commission's rules, 47 CFR Parts 64.1200, 64.1601, and 68.318, are amended as set forth in the attached Rule Changes. Effective August 25, 2003, except for 47 CFR 64.1200(c)(2), which contains the national do-not-call rules, which will go into effect on October 1, 2003; 47 CFR 64.1200(a)(5)

and (6) which contain the call abandonment rules, which will go into effect on October 1, 2003; 47 CFR 64.1601(e), which contains the caller ID rules, which will go into effect on January 29, 2004; and §§64.1200(a)(3)(i), (d)(1), (d)(3), (d)(6), (f)(3) and (g)(1), which contain information collection requirements under the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

199. The comments addressing the applicability of the informal complaint rules to telemarketers ARE INCORPORATED into CI Docket 02–32.

200. The Commission's Consumer & Governmental Affairs Bureau shall have authority to issue any reports to Congress as required by the Do-Not-Call Implementation Act.

201. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 64 and 68

Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends parts 64 and 68 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Subpart L is amended by revising the subpart heading to read as follows:

* * * * *

Subpart L—Restrictions on Telemarketing and Telephone Solicitation

* * * * *

■ 3. Section 64.1200 is revised to read as follows:

§ 64.1200 Delivery restrictions.

(a) No person or entity may: (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice,

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(2) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call,

(i) Is made for emergency purposes,

(ii) Is not made for a commercial purpose,

(iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation,

(iv) Is made to any person with whom the caller has an established business relationship at the time the call is made, or

(v) Is made by or on behalf of a tax-exempt nonprofit organization.

(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine,

(i) For purposes of paragraph (a)(3) of this section, a facsimile advertisement is not ''unsolicited'' if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender.

(ii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

(4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(5) Disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.

(6) Abandon more than three percent of all telemarketing calls that are answered live by a person, measured over a 30-day period. A call is ''abandoned'' if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting. Whenever a sales representative is not available to speak with the person answering the call, that person must receive, within two (2) seconds after the called person's completed greeting, a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf the call was placed, and that the call was for ''telemarketing purposes.'' The telephone number so provided must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign. The telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. The seller or telemarketer must maintain records establishing compliance with paragraph (a)(6) of this section.

(i) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line that is assigned to a person who either has granted prior express consent for the call to be made or has an established business relationship with the caller shall not be considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

(ii) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by paragraph (a)(6) of this section.

(7) Use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

(b) All artificial or prerecorded telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated, and

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity,

or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(9) of this section, to:

(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), or

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored for a period of 5 years. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(i) It can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:

(A) *Written procedures.* It has established and implemented written procedures to comply with the national do-not-call rules;

(B) *Training of personnel.* It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(C) *Recording.* It has maintained and recorded a list of telephone numbers that the seller may not contact;

(D) *Accessing the national do-not-call database.* It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process; and

(E) *Purchasing the national do-not-call database.* It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or

(ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or

(iii) The telemarketer making the call has a personal relationship with the recipient of the call.

(d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) *Written policy.* Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) *Training of personnel engaged in telemarketing.* Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(4) *Identification of sellers and telemarketers.* A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) *Affiliated persons or entities.* In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) *Maintenance of do-not-call lists.* A person or entity making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

(7) Tax-exempt nonprofit organizations are not required to comply with 64.1200(d).

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02–278, FCC 03–153, ''Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.''

(f) As used in this section:

(1) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term *emergency purposes* means calls made necessary in any situation affecting the health and safety of consumers.

(3) The term *established business relationship* means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction

with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(4) The term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(5) The term *seller* means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(6) The term *telemarketer* means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(7) The term *telemarketing* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(8) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(9) The term *telephone solicitation* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(10) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(11) The term *personal relationship* means any family member, friend, or acquaintance of the telemarketer making the call.

(g) Beginning January 1, 2004, common carriers shall:

(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

(2) When providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 CFR 64.1200 and 16 CFR 310. Failure to receive such notification will not serve as a defense to any person or entity making telephone solicitations from violations of this section.

(h) The administrator of the national do-not-call registry that is maintained by the federal government shall make the telephone numbers in the database available to the States so that a State may use the telephone numbers that relate to such State as part of any database, list or listing system maintained by such State for the regulation of telephone solicitations.

■ 4. Section 64.1601 is amended by adding paragraph (e) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

* * * * *

(e) Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(7) must transmit caller identification information.

(1) For purposes of this paragraph, caller identification information must include either CPN or ANI, and, when available by the telemarketer's carrier, the name of the telemarketer. It shall not be a violation of this paragraph to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller on behalf of which the telemarketing call is placed and the seller's customer service telephone number. The telephone number so provided must permit any individual to make a do-not-call request during regular business hours.

(2) Any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(3) Tax-exempt nonprofit organizations are not required to comply with this paragraph.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 5. The authority citation for part 68 continues to read:

Authority: 47 U.S.C. 154, 303.

■ 6. Section 68.318 is amended by revising paragraph (d) to read as follows:

§ 68.318 Additional limitations.

* * * * *

(d) *Telephone facsimile machines; Identification of the sender of the message.* It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. If a facsimile broadcaster demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority), must be identified on the facsimile, along with the sender's name. Telephone facsimile machines manufactured on and after December 20, 1992, must clearly mark such identifying information on each transmitted page.

* * * * *

[FR Doc. 03–18766 Filed 7–24–03; 8:45 am]

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Federal Register

Friday,
July 25, 2003

Part III

Department of Labor

Occupational Safety and Health Administration

Voluntary Protection Programs To Provide Safe and Healthful Working Conditions, Draft Revisions; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Voluntary Protection Programs To Provide Safe and Healthful Working Conditions, Draft Revisions; Notice

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed changes to the program; request for comments.

SUMMARY: The Occupational Safety and Health Administration requests comments on a proposed revision to its Voluntary Protection Programs (VPP) that would change the benchmark injury and illness rates used to determine whether VPP applicants and participants meet the rate requirements for the VPP Star Program. This change would also apply to the requirements for construction applicants' qualification for the Merit Program.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be postmarked by August 25, 2003.

Facsimile and electronic transmission: Your comments must be sent by August 25, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. C–06, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. C–06, in your comments.

Electronic: You may submit comments, but not attachments, through OSHA's Web site at the following address: *http://ecomments.osha.gov.* Information such as studies and journal articles must be submitted in triplicate hard copy to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

Access to comments and submissions: OSHA will make all comments and submissions available for inspection and copying at the OSHA Docket Office at the above address. Comments, and submissions relating to this document that are not protected by copyright, will also be available on OSHA's website. OSHA cautions you about submitting personal information such as Social Security numbers and birth dates. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA website and for assistance in using the website to locate docket submissions.

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Director, Office of Partnerships and Recognition, Occupational Safety and Health Administration, Room N3700, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 693–2213. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's website, *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** Notice 47 FR 29025, July 2, 1982, have established the efficacy of cooperative action among government, industry, and labor to address worker safety and health issues and expand worker protection. VPP participation requirements center on comprehensive management systems with active employee involvement to prevent or control the safety and health hazards at the worksite. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

One way that OSHA determines the qualification of applicants and the continuing qualification of participants in the VPP Star Program, the most challenging participation category, is to compare their injury and illness rates to industry rates—benchmarks—published annually by the Bureau of Labor Statistics (BLS). For Star eligibility, rates must be below the benchmark BLS rates. This notice proposes to change the benchmark rates that OSHA employs. Until now, the benchmarks have been two rates obtained from the most recent year's industry averages for nonfatal injuries and illnesses. OSHA proposes to now require that, to qualify for Star, applicants' and participants' rates must be below the two BLS industry rates for at least 1 of the 3 most recent years published. This change would also apply to the requirements for construction applicants' qualification for the Merit Program.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (hereinafter referred to as the Act or the OSH Act), was enacted ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. * * *''

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions that establish the legislative framework for the Voluntary Protection Programs:

> * * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;
>
> * * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;
>
> * * * (5) * * * by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;
>
> * * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

II. Discussion of the Proposed Change

OSHA has been concerned for some time about the effect on some VPP applicants and participants of substantial fluctuations from year to year in a limited number of BLS rates. For example, worksites in the manufacturing classification Petroleum and Coal Products/Petroleum Refining (Standard Industrial Classification—SIC—Code 29/291) were compared with published average total recordable case incidence rates (TCIR) of 2.50 in 1999, 3.70 in 2000, and 1.40 in 2001. This represented a rate change from 1999 to 2000 of plus 32 percent, and from 2000 to 2001 of minus 62 percent. Similarly, worksites in the manufacturing classification Sanitary Paper Products (SIC 2676) were compared with a published average TCIR of 7.00 in 1999, 4.50 in 2000, and 5.40 in 2001. This represented a 20 percent increase from 1999 to 2000, and a 35 percent decrease from 2000 to 2001.

The effect of these rate fluctuations is to create an unpredictable moving target that, in any particular year, may not fairly represent the injury and illness situation in an industry. It certainly creates a difficult dilemma for OSHA if the agency must approve one worksite and disapprove another when both have similarly excellent safety and health management systems and similar injury and illness experience. This situation occurs when OSHA compares one worksite against a 2000 benchmark rate, for example, and a similarly performing site against an unreasonably divergent 2001 benchmark rate.

There is no easy solution to this problem. Injury and illness rates are useful tools in judging how well a worksite is protecting its employees. OSHA believes, however, that the goals of VPP are not well served when worksites that have established excellent protective systems and that are steadily improving their injury and illness rates fail to obtain Star approval because of statistical anomalies in national rates.

After exploring various ways to address this problem, OSHA proposes to change the way it compares VPP applicants' and participants' injury and illness rates to the national rates that BLS publishes. The agency would no longer compare the individual worksite rates to the most recently published BLS industry rates at the most precise level available (at this time usually three or four digits). Instead, OSHA would look at the most recent 3 years of BLS rates (at the most precise level available each year) and require that worksite rates be below at least 1 of those 3 years of rates to qualify or continue to qualify for Star participation.

This proposed change might have the effect of reducing somewhat the weight OSHA heretofore has assigned to rates within VPP. Rates will continue to play a significant role, however. They are one indicator of how well a safety and health management system is operating and of how well a VPP candidate or participant is fulfilling the requirement for continuous improvement. In addition to examining a worksite's injury and illness rates, OSHA will continue to carefully evaluate how well a site is implementing the required major elements of Management Leadership and Employee Involvement; Worksite Analysis; Hazard Prevention and Control; and Safety and Health Training.

By going to the BLS website, a worksite aspiring to qualify for Star or to continue its Star qualification will be able to easily determine the rate against which its own rate will be compared. If there is a downward trend in the industry, that also will be apparent, but a sudden, inexplicably large drop in the BLS's industry rate will not have the impact it currently has for some VPP participants and applicants. And while a sudden, inexplicably large increase in the BLS's industry rate may make it easier for a worksite to meet the Star rate requirements, the program's many other, rigorous requirements will continue to ensure that only worksites with excellent safety and health management systems gain VPP Star approval.

To implement this revision, OSHA proposes changes in the following sections of the VPP:

III.F.4.a.(1) This is the basic Star rate requirement.

III.F.4.a.(2)(a) This is the alternative rate calculation available to qualifying small businesses.

III.H.2.b.(2) This deals with construction applicants' qualification for VPP's Merit Program.

III. Proposed Changes to the Voluntary Protection Programs

A. The Star Rate Requirement.

The beginning of III.F.4.a.(1) would change to:

''For site employees—Two rates reflecting the experience of the most recent 3 calendar years must be below at least 1 of the 3 most recent years of specific industry national averages for nonfatal injuries and illnesses (at the most precise level available, either three or four digits) published by the Bureau of Labor Statistics (BLS).''

B. The Alternative Rate Calculation for Qualifying Small Businesses

The complete wording of III.F.4.a.(2)(a) would change to:

''To determine whether the employer qualifies for the alternative calculation method, do the following:

- Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate for the employer assuming that the employer had two cases during the year;
- Compare that hypothetical rate to the 3 most recently published years of BLS combined injury/illness total recordable case incidence rates for the industry; and
- If the hypothetical rate (based on two cases) is equal to or higher than the national average for the firm's industry in at least 1 of the 3 years, the employer qualifies for the alternative calculation method.''

C. Construction Applicants' Qualification for Merit

The beginning of III.H.2.b.(2) would change to:

''For construction, if the incidence rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company-wide 3-year rates are below at least 1 of the 3 most recently published years of BLS rates for the industry (at the three-digit level).''

Signed at Washington, DC this 8th day of July 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–18928 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Friday,
July 25, 2003

Part IV

Department of Education

Special Demonstration Programs—Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities; Notices

DEPARTMENT OF EDUCATION

RIN 1820–ZA29

Special Demonstration Programs—Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS) proposes priorities under the Special Demonstration Programs. The Assistant Secretary may use these priorities in fiscal year (FY) 2003 and in later years. We take this action to focus attention on the adult literacy needs of individuals with disabilities pursuing employment under the State Vocational Rehabilitation Services Program. We intend that projects funded under these priorities will demonstrate that certain specific literacy services may raise the literacy levels and earnings of individuals with disabilities compared to individuals who receive the usual vocational rehabilitation (VR) services.

DATES: We must receive your comments on or before August 25, 2003.

ADDRESSES: Address all comments about these proposed priorities to Susan-Marie Marsh, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3316, Washington, DC 20202–2641. If you prefer to send your comments through the Internet, use the following address: *Susan-Marie.Marsh@ed.gov.*

You must include the term ''Model Demonstrations to Improve the Literacy and Employment Outcomes of Individuals With Disabilities'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Susan-Marie Marsh. Telephone: (202) 358–2796 or via Internet: *Susan-Marie.Marsh@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 3038, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Background

Preliminary data from the *Longitudinal Study of the Vocational Rehabilitation Services Program* suggest reading achievement levels are highly positively correlated with earnings. Data also indicate that VR agencies provide basic literacy services to only one percent of the VR population. As a result of these findings, the Rehabilitation Services Administration (RSA) is testing two instructional reading curricula: The Lindamood-Bell Language Program (LBLP) and the Wilson Reading System® (WRS). Both curricula have proven effective with adults with disabilities. However, the impact of these curricula on the literacy skills of adults with disabilities has not been assessed, and neither curriculum has been studied in a VR setting by RSA. Thus, RSA is interested in testing the impact of each curriculum on the literacy of adults with disabilities against the traditional services provided by VR.

Both curricula are phonics-based, but their instructional models differ. The WRS, based on the principles of Orton-Gillingham methodology, focuses on decoding and spelling for adults who have been unable to learn encoding and decoding through traditional basal methods, whole language, or other phonics programs and who require multisensory language instruction to master the phonological coding system of English. Teaching models of direct instruction with drill are implemented. The WRS Web site address is: *http://www.WilsonLanguage.com.*

The LBLP is used to develop students' cognitive and linguistic abilities in the areas of phonemic and orthographic awareness (symbol imagery) for decoding and spelling, and concept imagery for vocabulary development and oral and written language comprehension. The curriculum is student-driven, sequential, and constructivist-based, aimed at ultimately developing students' thinking or reasoning skills necessary for effective language processing (including reading), including all those areas predictive for reading success, including phonemic awareness, phonics, fluency, vocabulary, and comprehension. All of LBLP's instructional approaches use a Socratic pedagogy whereby the teacher leads the

learner or learners in homogenous groups, via a series of diagnostically based questions toward the area or areas needing to be stimulated. Instruction is customized and relies heavily on appropriate assessments from the most basic linguistic units all the way through the higher level cognitive and linguistic functions including metacognition, critical thinking, language processing, and inferential thinking. Further information may be found on the Internet at the following Web site: *http://www.lblp.com.*

An independent evaluator, selected after awards are made, will work with grantees to ensure that their projects are designed and implemented in a manner that will allow for rigorous evaluation, including the assignment of project participants into literacy intervention and control groups.

Proposed Priority—Model Demonstrations To Improve the Literacy Skills and Employment Outcomes of Individuals With Disabilities

This priority supports projects that demonstrate the effect literacy services and instruction have on improving literacy skills of targeted groups of VR consumers and the effect on their employment and earnings outcomes. Projects must demonstrate how VR offices can effectively integrate literacy services into their service delivery systems and can best provide literacy services and instruction to a targeted group of VR consumers.

Evaluation

Projects must assure cooperation with RSA and RSA's outside evaluator in meeting the evaluation needs of the project and RSA. Project cooperation with RSA's outside evaluator must include the following:

1. The assessment of all entering VR consumers in the designated project service area using brief methodologically acceptable screening instruments for learning disabilities and literacy levels to determine their eligibility for the project. The assessment does not include VR consumers with evidence of mental retardation in their case files.

2. The assignment of approximately one-half of the eligible project participants into a literacy intervention group who would receive the additional services and benefits of the project and approximately one-half of the project participants into a control group who would not receive projects services. However, no individual in the control group can be denied literacy services if his or her Individualized Plan for Employment (IPE) requires those services. Furthermore, those services may not be provided or paid for under these demonstration grants.

3. The use of diagnostic tests and effective assessments of reading proficiency consistent with the procedures of RSA's outside evaluator.

4. The administration of a pre- and post-test to project participants as directed by RSA's outside evaluator.

Interventions

An applicant for this competition must choose either the LBLP or the WRS for its curriculum and provide a rationale for its choice (*e.g.*, the local adult literacy provider already uses WRS). However, an applicant may also choose to describe its capacity to use the other curriculum if it would be willing to substitute the alternative curriculum as its curriculum in order to enhance its ability to compete. RSA will select grantees in a manner to ensure that each curriculum intervention is adequately represented in the applications selected for funding.

Project Participants

The following participant research criteria must be met:

1. Projects must have a sufficient number of individuals in the control and experimental groups so that the effects of the literacy intervention can be adequately measured.

2. Project participants must be eligible to receive VR services by the State VR agency and have, or be in the process of developing, an IPE.

3. All project participants (control and experimental groups) must be given an informed choice with respect to participation in the demonstration project consistent with the human subjects provisions as included in the application package.

4. Project participants for the experimental and control groups must be selected using the requisite instrument. RSA requires use of the *Learning Needs Screening Tool,* a validated and public domain screener, which can be incorporated into the VR intake process. Copies of the screener as well as further information may be found on the Internet at the following Web site: *http://www.seakingwdc.org/ld/WaScreenTool.htm.*

Use of Funds

Funds may be used only for project costs and related activities and may not be used to supplant the cost of services ordinarily provided by the VR program. Related activities may include, but are not limited to—(1) counselor training or orientation, including counselor training on administration of literacy assessment instruments, (2) educational assessment and evaluation, (3) research expenses, (4) support services such as consumer transportation, childcare, and facilitation for attendance and retention, (5) instructional materials, (6) curriculum and instruction, (7) professional development for instructors and administrators, (8) assistive technology devices and services, (9) instructional technology, and (10) consultants.

Invitational Priority

Within the priority for this competition, we are particularly interested in applications that meet the following invitational priority:

Establishing partnerships with other organizations that can assist in carrying out their respective projects related to improving literacy and employability skills of adults with disabilities.

These organizations might include Adult Education and Family Literacy (AEFL) programs, institutions of higher education, volunteer-based literacy programs, community rehabilitation programs, nonprofit or for-profit vendors of literacy services, and other workforce agencies. Applicants under this invitational priority must meet the requirements in 34 CFR 75.127 through 75.129, which governs how partnerships and other groups of eligible parties may submit applications and conduct funded projects.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The Assistant Secretary has determined this project to be beneficial to the ongoing research and further assistance of VR customers. No other direct financial contribution is expected of the grantee.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program. *Applicable Program Regulations:* 34 CFR part 373.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.235P Special Demonstration Programs—Model Demonstration Projects to Improve the Literacy and Employment Outcomes of Individuals With Disabilities)

Program Authority: 29 U.S.C. 773(b).

Dated: July 22, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19013 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.235P]

Special Demonstration Programs—Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: Special Demonstration Programs support projects that expand and improve the provision of rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Act), or further the purposes of the Act in empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society. This competition focuses attention on the adult literacy needs of individuals with learning disabilities pursuing employment under the State Vocational Rehabilitation Services Program. We intend that projects funded under these priorities will demonstrate that certain specific literacy services may raise the literacy levels and earnings of individuals with disabilities compared to individuals who receive the usual vocational rehabilitation (VR) services.

Eligible Applicants: State VR agencies.

Applications Available: July 28, 2003.

Deadline for Transmittal of Applications: August 27, 2003.

Deadline for Intergovernmental Review: September 26, 2003.

Estimated Available Funds: $1,600,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 8. Eight projects will be funded in total. Four projects will be funded under each of the two reading curricula described in the Background section of the notice of proposed priorities published elsewhere in this issue of the **Federal Register**.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is suggested that you limit Part III to 35 pages.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, and 99. (b) The regulations for this program in 34 CFR part 373.

Priorities

Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities published elsewhere in this issue of the **Federal Register**, because the Department's authority to obligate these funds will expire on September 30, 2003. Applicants should base their applications on the proposed priorities. If changes are made in the final notice in response to public comments or other considerations, applicants will be given an opportunity to revise or resubmit their applications.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Invitational Priority

The invitational priority in the notice of proposed priorities published elsewhere in this issue of the **Federal Register** also applies to this competition.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

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 for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Demonstration Programs—CFDA number 84.235P is one of the programs included in the pilot project. If you are an applicant under the Special Demonstration Programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within 3 working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Special Demonstration Programs 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 1 business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Demonstration Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235P.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Susan-Marie Marsh, U.S. Department of Education, 400 Maryland Avenue, SW., room 3316, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 358–2796, or via Internet: *susan-marie.marsh.@ed.gov.*

If you use a TDD, you may call FIRS at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in the preceding paragraph.

Electronic Access to This Document

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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: 29 U.S.C. 773(b).

Dated: July 22, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19014 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

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To award a congressional gold medal to Prime Minister Tony Blair. (July 17, 2003; 117 Stat. 862)

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